



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Luxmore Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, (the "Notice"), issued on October 6, 2020;
2. To have the landlord comply with the Act; and
3. To recover the cost of filing the application.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on September 25, 2019. Rent in the amount of \$3,000.00 was payable on the first of each month. A security deposit of \$1,500.00 was paid by the tenants.

The tenant testified that they received the Notice on October 6, 2020. The Notice was issued in the amount of \$6,000.00, for unpaid rent for September and October 2020.

The tenant testified that they did not pay rent for September 2020, because the landlord was wanting to end the tenancy. The tenant stated that the landlord told them if they vacated the premise by September 30, 2020, they would not have to pay rent for September 2020.

The tenant testified that they did not agree to the ending of the tenancy, as they wanted proper written notice to end the tenancy from the landlord.

The tenant testified that they paid October 2020, rent in two payments of \$1,500.00. The first payment was made on October 3, 2020, and final payment was made on October 15, 2020.

The landlord testified that the tenant did not pay all rent for August 2020, and they agreed the security deposit could be applied for the unpaid rent. The tenant acknowledged this at the hearing.

The landlord testified that the tenant had no authority not to pay September 2020, as the tenants were not in agreement to end the tenancy.

The landlord confirmed that rent for September 2020 was not paid, and October 2020 rent was not paid in full within the 5 days of the tenants receiving the Notice. The landlord stated they have accepted occupancy rent for all subsequent months. The landlord seeks an order of possession and a monetary order for unpaid rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 *(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

...

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 *(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.*

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

In this case, the parties agreed that the tenants failed to pay the amount of \$1,500.00 for August 2020 rent. The parties agreed that the security deposit would be applied to

August 2020, rent. Therefore, I authorize the landlord to keep the security deposit in full satisfaction of August 2020, rent.

In this case, the evidence of the tenant was that they did not pay rent for September 2020, because the landlord stated that they did not have to pay the rent if they agreed to vacate the premise by September 30, 2020. However, the evidence of the tenant was that they were not accepting the landlord's offer to end the tenancy.

While the tenants had the right to refuse the landlords offer to end the tenancy; however, when they refused that offer, they had no authority under the Act to withhold the rent for September 2020. The waiving of September 2020, rent was only if the tenants agreed to vacate the premise, which they did not agree to. I find the tenants breached the Act as they had no legal right to under the Act to withhold rent for September 2020. Therefore, I find the landlord is entitled to recover unpaid rent for September 2020, in the amount of **\$3,000.00**.

While I accept the tenants have now paid October 2020, rent; however, that rent, and the rent owed for September 2020, were not paid within 5 days of receiving the Notice. Therefore, I find the Notice is valid. I find the tenancy legally ended on October 16, 2020, and the tenants are now overhold the premise.

Based on the above, I dismiss the tenants' application to cancel the Notice.

As the tenants' application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find that the landlord has established a monetary order of **\$3,100.00** comprised of unpaid rent for September 2020, and the \$100.00 fee they paid for filing their application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession. The landlord is entitled to keep the security deposit for unpaid rent for August 2020. The landlord is granted a monetary order for unpaid rent for September 2020 and to recover the cost of the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 04, 2021

Residential Tenancy Branch