



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, ERP, RP, OPU-DR, OPUM-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On November 6, 2020, the Tenants made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”).

On November 16, 2020, the Tenants amended their Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Act*, seeking an emergency repair Order pursuant to Section 62 of the *Act*, and seeking a repair Order pursuant to Section 32 of the *Act*.

On November 19, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent and utilities based on the Notice, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing. The Landlord attended the hearing with J.T. and S.H. attending as agents for the Landlord. All parties in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing and evidence package to the Landlord by registered mail on November 13, 2020, and the Landlord confirmed receipt of this package. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was sufficiently served

the Notice of Hearing and evidence package. As such, I have accepted the Tenants' evidence and will consider it when rendering this Decision.

The Tenants were not sure if they served their Amendment to the Landlord, and they claimed that they only ever served one package of documents to the Landlord by registered mail on November 13, 2020. The Landlord advised that he did not receive any Amendment from the Tenants. As it would not have been possible for the Tenants to serve the November 16, 2020 Amendment to the Landlord on November 13, 2020, and as the Tenants did not have any proof of service, I am not satisfied that the Tenants served this Amendment to the Landlord in accordance with Rule 4.6 of the Rules of Procedure. As such, I find that the Tenants did not properly Amend their Application to dispute the Notice, to request emergency repairs, or to request regular repairs.

The Landlord advised that despite naming five Tenants on his Application, he only served one Notice of Hearing package to the two Tenants on the tenancy agreement. However, he was not sure if he served his evidence to them. The Tenants confirmed that they received two Notice of Hearing packages in one registered mail package and that they received the Landlord's evidence as well. Despite the Landlord not serving all five Respondents named on his Application with a separate Notice of Hearing package, and despite not serving the two Tenants a separate Notice of Hearing package each pursuant to Rule 3.1 of the Rules of Procedure, the Tenants did not make any submissions and took no position with respect to these errors in service. As such, I am satisfied that the Tenants were served the Landlord's Notice of Hearing and evidence packages. In addition, I have accepted the Landlord's evidence and will consider it when rendering this Decision. Furthermore, as the other three named Respondent on the Landlord's Application were not tenants, their names have been removed as Respondents from the Style of Cause on this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's One Month Notice to End Tenancy for Cause dismissed?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to have the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dismissed?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2020, that rent was established at an amount of \$2,300.00 per month, and that it was due on the first day of each month. A security deposit and a pet damage deposit of \$1,150.00 each were paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

Both parties agreed that the One Month Notice to End Tenancy for Cause was served; however, neither party was sure of when. The effective end date of the tenancy was noted on the Notice as December 1, 2020. Some submissions were made with respect to the reasons this Notice was served; however, the focus of the hearing turned to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

While the Landlord advised that two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities were served, the Tenants advised they were only served with one on November 10, 2020. As only one 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was submitted as documentary evidence, I am satisfied that this Notice would be the focus of this hearing. The Notice indicated that \$2,691.60 was owing for rent, that \$286.10 was owing for utilities, and that these were due on November 1, 2020. The effective end date of the tenancy was noted on this Notice as November 20, 2020.

The Landlord submitted that the Tenants only paid \$1908.35 for October 2020 and did not pay November rent on November 1, 2020. Thus, the Notice was served. The Tenants then paid only \$2,000.00 on November 20, 2020 and have not paid any rent since. The Tenants did not have any authorization to withhold any amount from October or November 2020 rent. As such, the Landlord is seeking an Order of Possession and a Monetary Order in the amount as follows:

- October 2020 rent: \$391.65
- November 2020 rent: \$300.00
- December 2020 rent: \$2,300.00
- January 2021 rent: \$2,300.00
- Total rental arrears: **\$5,291.65**

The Landlord was also seeking compensation in the amount of **\$286.10** for outstanding utilities. However, as this Notice was served prior to any written demand being served for the utilities, this claim has been dismissed with leave to reapply.

The Tenants confirmed that they only paid \$1908.35 for October 2020 and stated that the reason they withheld this amount was for an emergency repair that they paid for. They submitted that they paid for a furnace repair that was damaged due to their cat. However, they stated that the repair person suggested that they blame this damage on a squirrel, and they confirmed that the repair person noted this on a supplied invoice as well. The Tenants acknowledged that this was a fraudulent claim and that they should not have pursued this. As well, they confirmed that they had no authorization to withhold any amount from October 2020 rent. They also confirmed that they only paid the Landlord \$2,000.00 on November 20, 2020 and that they did not have a valid reason under the *Act* for not paying the full amount of rent for November 2020.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenants received the Notice on November 10, 2020. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenants received the Notice on November 10, 2020, they must have paid the rent in full by November 15, 2020 or disputed the Notice by Monday November 16, 2020 at the latest. While the Tenants attempted to amend their Application to dispute the Notice, I was not satisfied that they served the Amendment in accordance with the Rules of Procedure. As such, I do not find that they disputed the Notice.

Regardless, even if they had disputed the Notice properly, the Tenants confirmed that they did not have a valid reason under the *Act* for withholding \$391.65 from October rent. Furthermore, the undisputed evidence is that the Tenants did not have authority to withhold \$300.00 from November 2020 rent nor did they pay the outstanding arrears of rent in full within five days of receiving the Notice. Based on the undisputed evidence before me, I am satisfied that the Tenants did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenants did not pay the rent in full and as they had no authority to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession

pursuant to Sections 46 and 55 of the *Act*. Consequently, the Order of Possession takes effect **two days** after service on the Tenants.

I also grant the Landlord a monetary award in the amount of **\$5,291.65** for the outstanding rental arrears.

As the Landlord was granted an Order of Possession on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the reasons for which the One Month Notice to End Tenancy for Cause did not need to be addressed.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Rental arrears for October 2020	\$391.65
Rental arrears for November 2020	\$300.00
Rental arrears for December 2020	\$2,300.00
Rental arrears for January 2021	\$2,300.00
Filing Fee	\$100.00
Total Monetary Award	\$5,391.65

Conclusion

The Tenants' Application is dismissed without leave to reapply.

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$5,391.65** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Landlord's claims for utilities are dismissed with leave to reapply.

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 29, 2021

Residential Tenancy Branch