



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNRT, RR, RP

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 21, 2020 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a 10 Day Notice for unpaid rent or utilities (the "10 Day Notice") dated December 15, 2020.
- a monetary order for the cost of emergency repairs;
- an order for a rent reduction; and
- an order for regular repairs.

The Tenant S.G. and the Landlord's Agent C.F. attended the hearing at the appointed date and time. At the start of the hearing the parties acknowledged service and receipt of the respective Application and documentary evidence packages. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules of Procedure). 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 is compliant with the *Act*.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenants' request for a monetary order for the cost of emergency repairs, an order granting a rent reduction, and order are dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order cancelling the 10 Day Notice, pursuant to Section 46 of the *Act*?
2. If the Tenants are not successful in cancelling the 10 Day Notice, are the Landlords entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified that the tenancy began on August 1, 2020. Currently, rent in the amount of \$2,600.00 is due to be paid to the Landlords by the first day of each month. A security deposit in the amount of \$1,300.00 was paid to the Landlord.

The Landlords Agent stated that the Tenants failed to pay rent in the amount of \$2,600.00 when due in December 2020. The Landlords Agent stated that he served the Tenants by Registered Mail on December 16, 2020 with the 10 Day Notice dated December 15, 2020 with an effective vacancy date of December 31, 2020. The 10 Day Notice indicates that the Tenants have failed to pay rent in the amount of \$2,600.00 which was due on December 1, 2020. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explained that the Tenants had five days to dispute the Notice. The Tenant confirmed having received the notice on December 18, 2020 and disputed the 10 Day Notice within the appropriate timelines.

The Landlord's Agent testified that the Tenants have made no payments towards the outstanding balance of unpaid rent according to the 10 Day Notice. Furthermore, the Landlord's Agent stated that the Tenants have also failed to pay rent for the month of January, February, and March 2021. Currently, the Landlord's Agent stated that the Tenants owe \$10,400.00 in unpaid rent.

In response, the Tenant stated that the 10 Day Notice was only served to him via Registered Mail and that the other Tenant listed on the tenancy agreement was not served with a 10 Day Notice. Regardless, the Tenant confirmed receipt of his copy of the 10 Day Notice on December 18, 2020. The Tenant also confirmed that the other Tenant's name is listed on the 10 Day Notice.

The Tenant confirmed that he did not pay rent to the Landlord for December 2020. The Tenant stated that he felt entitled to withholding the rent due to some repairs that are required in the rental unit. The Tenant stated that he repaired a clogged sink, clogged shower, and clogged toilet. The Tenant provided an invoice in the amount of \$4,600.00 in relation to these repairs. The Landlord's Agent stated that he was not consulted regarding these repairs. Furthermore, the Landlord's Agent provided an email from a certified plumber which indicates that the estimated cost of these repairs would not have been more than \$1,000.00.

The Tenant referred to other repairs required in the rental unit such as a faulty cabinet door, low water pressure, and a kitchen faucet that does not extend. The Tenant also stated that he lost his employment due to the Covid-19 Pandemic, therefore, is unable to pay the rent at this time.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find;

Section 26 of the Act states that a Tenants must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 46 of the Act states 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.

Section 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

In relation to the 10 Day Notice dated December 15, 2020, The Landlord's Agent testified that he served the 10 Day Notice by Registered Mail to the Tenants on December 16, 2020. The Tenant acknowledged receipt on December 18, 2020 in this manner. While the Tenant stated that his wife was not served with her own copy of the 10 Day Notice, I accept that the Tenant S.G. confirmed receipt and that both Tenants' names are listed on the 10 Day Notice. Therefore, pursuant to section 88 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

I accept the Tenant confirmed during the hearing that he withheld December 2020 rent in the amount of \$2,600.00 as he felt entitled to retaining the rent in relation to repairs he made to the rental unit which amounted to \$4,600.00.

According to Section 33 (1) In this section, **"emergency repairs"** means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) **A tenant may have emergency repairs made only when all of the following conditions are met:**

- (a) **emergency repairs are needed;**

(b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;

(c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

The Tenant referred to repairs relating to a clogged sink, toilet, and shower. In this case, I don't find these repairs to constitute an emergency repair. I further find that the Tenants provided insufficient evidence to demonstrate that they made 2 attempts to contacting the Landlord or their Agent about the repairs, nor did the Tenants provide the Landlord or their Agent a reasonable time to make the repairs. I accept the Landlord's Agent's testimony that they were not contacted about the repairs until after they were completed.

I find that the Tenants were not entitled to withholding the rent for December 2020. As such, I find that they are conclusively presumed to have accepted the end of the tenancy. As such, I dismiss the Tenants' Application to cancel the 10 Day Notice dated December 15, 2020 without leave to reapply.

Under section 55 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlords is entitled to an order of possession effective **2 (two)** days, after service on the Tenants, pursuant to section 55 of the Act. This order should be served onto the Tenants as soon as possible. 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.

Conclusion

The Tenants' Application to cancel the 10 Day Notice dated December 15, 2020 is dismissed without leave to reapply. The Landlords are granted an order of possession effective **2 days** after service on the Tenants. The order should be served as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: March 19, 2021

Residential Tenancy Branch