



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for an order of possession, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenants.

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.

Issues to be Decided

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

Background and Evidence

Counsel for the landlord stated that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on October 28, 2020, and was served on the tenants by process server in person on October 31, 2020. Counsel stated that the tenants did not dispute the Notice, nor did they pay the outstanding rent.

Counsel for the landlord stated the tenants have not paid any rent since November 2019 to March 2021. Counsel stated that the landlord has been trying to deal with this situation for some time and have retained their services.

The tenants testified that they received the Notice; however, as it just a form printed from the Residential Tenancy Branch (RTB) website and they just ignored it. The tenants stated they did contact the RTB at that time to see if a hearing had been arranged which it had not.

The tenants testified that they have not paid any rent to the landlord since November 2019. The tenants stated that the landlord had illegally increased their rent from \$900.00 to \$1,500.00 and they are entitled to withhold the rent on this basis. The tenants confirmed they have not provided any evidence to support an illegal rent increase.

Counsel for the landlord argued rent has always been \$900.00 since the tenancy commenced and there has been no rent increase.

Analysis

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

I have reviewed the Notice, and the Notice was completed in accordance with section 46 and 52 of the Act.

I find that the tenants were served with a notice to end tenancy for non-payment of rent on October 31, 2020 , by personal service. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice to prove they had the authority under the Act to withhold the rent.

The tenants have not paid the outstanding rent and did not apply to dispute the notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on the effective vacancy date of the Notice, which was November 15, 2020. The tenants are overholding the premise on an occupancy basis.

Further, the tenants have provided no supporting evidence to prove they paid an illegal rent increase at any time during their tenancy, such a copy of cancelled cheques. The tenants admit they have not paid any rent since November 2019 to present for a total of 17 months.

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 tenants. 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 total monetary claim of **\$15,400.00** comprised of unpaid rent of \$15,300.00 and the \$100.00 fee paid by the landlord for this application. I grant the landlord an order pursuant to section 67 of the Act. 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.

I have not offset the security deposit with the above monetary order. The landlord stated a security deposit was not paid. The tenants stated they paid \$450.00.

However, if the tenants can prove they paid a security deposit, the landlord is entitled to keep the security deposit if the above amount remains unpaid at the end of tenancy pursuant to section 38(3) of the Act.

Conclusion

The tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and a monetary order for the balance due.

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 12, 2021

Residential Tenancy Branch