



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on January 04, 2021 (the “Application”). The Tenants applied to dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated January 02, 2021 (the “Notice”).

The Tenants appeared at the hearing. The Landlord appeared at the hearing with D.T., his son, to assist. D.T. mentioned wanting to call a witness during the hearing. I told D.T. to let me know when the witness was relevant. D.T. did not advise that the witness was relevant to the issues being addressed during the hearing and I did not hear from the witness.

I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing as the Rules of Procedure (the “Rules”) prohibit this. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

D.T. confirmed receipt of the hearing package and Tenants’ evidence.

The Tenants testified that they did not receive the Landlord’s evidence. D.T. testified that the Landlord’s evidence was not served on the Tenants.

The Landlord was required to serve their evidence on the Tenants pursuant to rule 3.15 of the Rules. The Landlord did not serve their evidence and therefore did not comply with rule 3.15 of the Rules.

I told the parties I would consider whether the Landlord's evidence should be admitted or excluded pursuant to rule 3.17 of the Rules and heard the parties on this. The Tenants submitted that the evidence should be excluded because they have not seen it. D.T. submitted that the evidence should be admitted because the Tenants have not paid rent.

Pursuant to rule 3.17 of the Rules, I told the parties the Landlord's evidence would be excluded because I found it would be unfair to consider it when the Tenants have not seen it and could not respond to it.

D.T. sought an adjournment to allow the Landlord an opportunity to serve their evidence on the Tenants. I heard the parties on the Application and returned to the issue of an adjournment at the end of the hearing. D.T. continued to seek an adjournment for the Landlord to serve their evidence on the Tenants. The only evidence the Landlord submitted that they wanted me to consider was a plumbing bill showing when a water line at the rental unit was fixed. The Tenants said they were fine with an adjournment. I told the parties I would consider the issue and make a decision in my written decision. I told the parties they would receive an Interim Decision about an adjourned hearing if I determined an adjournment was appropriate or a final decision if I determined an adjournment was not appropriate.

I have considered rule 7.9 of the Rules. I decline to grant an adjournment for the Landlord to serve a plumbing bill on the Tenants because a plumbing bill showing when a water line at the rental unit was fixed is not relevant to my decision for the reasons outlined below. An adjournment would unnecessarily delay the proceedings.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

Background and Evidence

A written tenancy agreement was submitted as evidence. The agreement names B.K. as the landlord. D.T. advised that B.K. and the Landlord are co-owners of the rental unit. The tenancy started March 15, 2020 and was for a fixed term ending March 15, 2021. Rent is \$4,000.00 per month.

The Tenants testified that the understanding between the parties was that rent was due on the first day of each month but could be paid by the third day of the month. D.T. agreed with this and testified that it was understood that the Tenants would pay rent within the first week of the month.

The Notice states that the Tenants failed to pay \$6,900.00 in rent due January 07, 2021. The Notice is addressed to the Tenants and refers to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of January 12, 2021.

The Tenants took issue with the Notice naming the Landlord as the landlord given the tenancy agreement names B.K. as the landlord. The Tenants testified that they did not know who the Landlord was.

The parties agreed the Notice was provided to a youth at the rental unit on January 02, 2021 and posted to the door of the rental unit on January 03, 2021. Tenant K.W. acknowledged receiving the Notice on January 03, 2021.

D.T. testified that the Notice is based on the following:

- \$1,500.00 in unpaid rent for December of 2020
- \$4,000.00 in unpaid rent for January of 2021
- \$1,200.00 for a water bill
- \$617.00 for a garbage bill

D.T. acknowledged that the water bill and garbage bill are for utilities. The Notice was not issued for unpaid utilities.

D.T. testified that the Tenants have not paid any rent since being issued the Notice.

The Tenants acknowledged they did not pay \$1,500.00 of December rent and did not pay January rent.

I had outlined for the parties the six reasons tenants can withhold rent pursuant to the *Residential Tenancy Act* (the “*Act*”) and asked the Tenants if any of these reasons applied. The Tenants advised that none of the six reasons outlined applied. The Tenants advised that they did not pay rent because there was no water in the rental unit in January and February. The Tenants pointed to evidence from the relevant health authority showing a complaint was made about the domestic water supply being shut off on January 15, 2021 and an inspection confirmed the water supply had been shut off.

The Tenants acknowledged they did not pay rent after being issued the Notice.

In reply, D.T. testified that the main water line at the property broke and that the water was shut off from January 15, 2021 to January 27, 2021.

D.T. sought an Order of Possession effective April 15, 2021.

Analysis

Section 26(1) of the *Act* states:

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.** (emphasis added)

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

- 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...
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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...

Section 55(1) of the *Act* states:

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...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Based on the written tenancy agreement and testimony of the parties, I find the Tenants were required to pay \$4,000.00 in rent per month within the first week of each month.

The Notice is dated January 02, 2021 and was served January 02 and 03, 2021. I am not satisfied January rent was due when the Notice was issued given D.T. acknowledged that the understanding was that rent would be paid within the first week of the month. I also note that the Notice itself refers to unpaid rent due January 07, 2021, after the Notice was issued. The Landlord was not permitted to issue the Notice based on unpaid rent that was not yet due. Therefore, I have only considered the Notice in relation to December rent. I have also not considered outstanding amounts for water bills or garbage bills as these are utilities and the Notice was not issued for unpaid utilities.

Based on the testimony of the parties, I am satisfied the Tenants were required to pay \$4,000.00 in rent for December within the first week of December pursuant to the tenancy agreement and verbal agreement of the parties.

I am not satisfied the Tenants had authority under the *Act* to withhold rent. As explained to the parties during the hearing, there are only six reasons tenants can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

The Tenants advised that they did not pay rent because of the water issue. The water issue did not provide the Tenants authority under the *Act* to withhold rent as it is not one of the six reasons tenants can withhold rent.

I note that section 33 of the *Act* in relation to emergency repairs only applies when tenants have paid for emergency repairs, sought reimbursement from the landlord and the landlord has not reimbursed the tenants. It is not my understanding that the Tenants paid to fix the water issue as the Tenants did not state this.

Further, the Tenants acknowledged that none of the six reasons for withholding rent outlined applied.

I also note that I am considering unpaid rent for December of 2020. The evidence shows the water issue began January 15, 2021. Therefore, the water issue could not have provided the Tenants authority to withhold rent for December.

In the circumstances, I am satisfied the Tenants were required to pay \$4,000.00 in rent for December within the first week of December pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

I am satisfied the Tenants failed to pay \$1,500.00 of December rent within the first week of December as both parties agreed on this.

Given the Tenants did not pay rent as required, the Landlord was entitled to serve them with the Notice pursuant to section 46(1) of the *Act*.

Based on the testimony of the parties, I am satisfied the Notice was posted to the door of the rental unit January 03, 2021 and therefore served in accordance with section 88(g) of the *Act*. Based on the testimony of Tenant K.W., I am satisfied the Tenants received the Notice January 03, 2021.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants raised an issue in relation to the Landlord being named on the Notice. I do not find this invalidates the Notice because the Landlord is a co-owner of the rental unit and therefore a landlord in relation to the rental unit. Further, I am not satisfied the Landlord's name on the Notice negatively impacted the Tenants. The Notice is addressed to the Tenants and refers to the rental unit and therefore I am satisfied the Tenants should have known the Notice related to them and the rental unit. Further, the Tenants disputed the Notice and therefore must have understood that the Notice related to them and the rental unit.

I also acknowledge that the amount of unpaid rent noted on the Notice is \$6,900.00 and I am only considering the \$1,500.00 outstanding for December. I do not find that the incorrect rent amount invalidates the Notice because I am satisfied the Tenants knew what amount of rent was outstanding on January 02, 2021 given they acknowledged not paying \$1,500.00 of December rent.

The Tenants had five days from receipt of the Notice on January 03, 2021 to pay the outstanding rent for December or dispute the Notice pursuant to section 46(4) of the *Act*.

I am satisfied the Tenants did not pay \$1,500.00 for December rent after the Notice was issued as the parties agreed the Tenants did not pay any rent after being issued the Notice.

The Tenants disputed the Notice January 04, 2021, within time. However, the Tenants acknowledged they did not pay \$1,500.00 of December rent and the Tenants did not point to authority under the *Act* to withhold this amount. Given this, I dismiss the Tenants' dispute of the Notice without leave to re-apply as I find the Tenants have not provided a valid basis to dispute the Notice. Further, I am satisfied the Landlord had grounds to issue the Notice and I uphold the Notice.

Pursuant to section 55(1) of the *Act*, the Landlord is entitled to an Order of Possession based on the Notice. The Order of Possession will be effective April 15, 2021 as requested.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 15, 2021. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court 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 *Act*.

Dated: March 31, 2021

Residential Tenancy Branch