



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LAT, OLC, OPU-DR, OPUM-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On January 6, 2021, the Tenants made an 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 *Residential Tenancy Act* (the “Act”), seeking authorization to change the locks pursuant to Section 31 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

On January 8, 2021, 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 utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenant G.R. and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was not served to the Landlord. Based on this undisputed testimony, as the Notice of Hearing package was not served to the Landlord pursuant to Rule 3.1 of the Rules of Procedure, the Tenants’ Application is dismissed without leave to reapply.

The Landlord advised that he served each Tenant with a Notice of Hearing package by hand on January 10, 2021. The Tenant confirmed that they received these packages. Based on this undisputed evidence, I am satisfied that the Tenants were sufficiently served the Notice of Hearing packages.

The Landlord advised that he served his evidence approximately two weeks ago by posting it to door of the address on the Tenants’ Application. The Tenant advised that

he did not know what this address was and that he did not receive any evidence. As such, I have excluded the Landlord's evidence and will not consider it when rendering 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.

Issue(s) to be Decided

- 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 May 18, 2020 and that the tenancy ended on February 13, 2021. Rent was established at an amount of \$1,300.00 per month and was due on the first day of each month. A security deposit of \$700.00 was also paid. The Landlord was cautioned that he is only permitted to collect a security deposit in the amount of half a month's rent at the most, pursuant to Section 19 of the *Act*. A copy of the signed tenancy agreement was submitted as documentary evidence.

They also agreed that the Notice was served by hand on January 2, 2021. The Notice indicated that \$1,300.00 was owing for rent on January 1, 2021. The effective end date of the tenancy was noted as January 11, 2021.

The Landlord submitted that the Tenants did not pay any rent for January 2021. Thus, the Notice was served. After that, the Tenants still did not pay any rent for January 2021 and co-tenant A.G. vacated the rental unit on January 31, 2021. He stated that he then signed a mutual agreement, with the Tenant, to end the tenancy on February 13, 2021, and that a condition of the agreement was that only \$200.00 would be owed for

February 2021 rent. He stated that the Tenant paid the \$200.00 and vacated the rental unit on February 13, 2021. As such, he is only seeking compensation in the amount of **\$1,300.00** for January 2021 rental arrears.

The Tenant confirmed that the tenancy ended on February 13, 2021 and he advised that he understood that the nature of the Landlord's Application was for unpaid rent. He acknowledged that he signed a mutual agreement to end the tenancy for February 13, 2021 and that the only rent owing for February 2021 would be \$200.00. He confirmed that no rent was paid for January 2021.

All parties also agreed that the Landlord returned \$200.00 of the security deposit to A.G. on January 31, 2021, that the Landlord returned \$200.00 of the security deposit to the Tenant on February 13, 2021, and that the Landlord is still holding \$300.00 of the security deposit in trust.

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 January 2, 2021. According to Section 46(4) of the *Act*, the Tenants had 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 January 2, 2021, they must have paid the rent in full or disputed the Notice by January 7, 2021 at the latest. While the Tenants disputed the Notice within the five-day time frame, the Tenant acknowledged that the Notice of Hearing package was not served to the Landlord. As such, the Tenants' Application was dismissed.

Given that the Tenants did not have authorization from the Landlord, or a valid reason under the *Act*, 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*. As the Tenants have given up vacant possession of the rental unit, an Order of Possession is not necessary to be granted.

However, I do grant the Landlord a monetary award in the amount of **\$1,300.00** for the outstanding rental arrears for January 2021.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the remaining security deposit in partial satisfaction of these claims.

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 January 2021	\$1,300.00

Filing Fee	\$100.00
Security deposit	-\$300.00
Total Monetary Award	\$1,100.00

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 **\$1,100.00** 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.

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: April 1, 2021

Residential Tenancy Branch