



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities, issued February 5, 2021, and to recover the cost of the filing fee. The matter was set for a conference call.

The Landlord’s Agent (the “Landlord”) and one of the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Tenant and the Landlord were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Should the Notice issued on February 5, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Are the Tenants entitled to the return of the filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties agreed that the tenancy began on August 1, 2018, for a one-year fixed term tenancy that rolled into a month-to-month tenancy at the end of the initial fixed term. Rent in the amount of \$7,250.00.00 was to be paid by the first day of each month, and the Landlord collected a \$3,625.00 security deposit and a \$3,625.00 pet damage deposit at the outset of this tenancy. The parties also agreed that a rent increase was issued, in accordance with the Act, increasing the rent for this tenancy to \$7,400.00 per month as of August 1, 2019. The Landlord submitted a copy of the tenancy agreement and rent increase notice into documentary evidence.

The parties agreed that the Tenants approached the Landlord in March of 2020, requesting a rent reduction due to financial hardships during the COVID-19 pandemic and that their request was denied by the Landlord.

The Tenant testified that on March 30, 2020, they issued written notice to the Landlord to end their tenancy, which was served to the Landlord in person at the Landlord's Agents office and via email. The Tenant testified that this notice ended the tenancy as of April 30, 2020. The Tenants submitted a copy of their notice to end tenancy into documentary evidence.

The Landlord testified that they did receive the Tenant's written notice to end their tenancy, with an effective date of April 30, 2020.

The parties agreed that they continued to negotiate a rent reduction and that they eventually agreed to monthly rent of \$6,000.00 per month. The Landlord testified that the rent reduction was effective as of April 1, 2020. The Tenant testified that the new rent amount started as of May 1, 2020. The Landlord submitted the history for this negotiation into documentary evidence.

The Landlord testified that on January 19, 2021, they issued notice to the Tenants that the rent reduction period would be ending and that the original monthly rent amount of \$7,400.00 would be due as of February 1, 2021, and onward for this tenancy. The Landlord testified that this notice to return to the original contract rent amount was

delivered to the Tenants by email; the Landlord submitted a copy of this email into documentary evidence.

The Landlord testified that it was their intent to only offer a short term rent reduction, of the contacted rent amount, due to the COVID-19 pandemic, and that it was always their intent to return to the original rent amount of \$7,400.00 per month.

The Landlord testified that the Tenant's paid \$6,000.00 of the \$7,400.00 rent for February 2021, on February 1, 2021. The Landlord testified that they attempted to contact the Tenants to arrange payment of the remain \$1,400.00 due for February 2021; however, they were unable to arrange payment of this amount.

The Landlord testified that they issued a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities on February 5, 2021, by leaving the Notice in the Tenants mailbox, listing an outstanding rent amount of \$1,400.00 at the time of service.

The Tenant testified that they officially ended their written tenancy with the Landlord when they issued their written notice to end their tenancy effective April 30, 2020, and that they entered into a new verbal tenancy agreement with the Landlord that started as of May 1, 2020, for the agreed-upon monthly rent of \$6,000.00 per month. The Tenant testified that they only owed \$6,000.00 for the February 2021 rent, that this amount had been paid in full, and the Landlord's Notice should be cancelled.

Both the parties agreed that no written agreement was made to cancel the Tenant's notice to end their tenancy, served to the Landlord on March 30, 2020, and that no formal agreement had been entered into for a temporary rent reduction of the original tenancy agreement.

Analysis

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

I accept the agreed-upon testimony of these parties that the Tenants served the Landlord with written notice to end their tenancy, on March 30, 2021. Section 45 of the *Act* states the following:

Tenant's notice

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) *A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) *If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.*

(4) *A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].*

I have reviewed the Tenants' notice, and I find that pursuant to section 45(2) of the *Act*, the Tenants end their signed tenancy agreement with the Landlord, as of April 30, 2020, in accordance with the *Act*.

I also accept the agreed-upon testimony of these parties that the Tenants have remained in the rental unit after the end of the tenancy date indicated on their notice, paying the Landlord rent in the amount of \$6,000.00 per month.

I find that the exchange of rent from the Tenants to the Landlord, in the amount of \$6,000.00 on May 1, 2020, created a new verbal tenancy agreement between these parties.

Accordingly, I find that a verbal tenancy exists between these parties that stated on May 1, 2020, for an agreed-upon monthly rent payment of \$6,000.00 per month, due on the first day of each month.

I also find that the Landlord continues to retain a \$3,625.00 security deposit and a \$3,625.00 pet damage deposit from previous tenancy between these parties for this tenancy. Section 19 of the *Act* states the following:

Limits on amount of deposits

19 (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

(2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Pursuant to section 19 of the *Act*, the Landlord may hold a maxim deposits for this tenancy in the amounts of \$3,000.00 in a security deposit and \$3,000.00 in a pet damage deposit. Accordingly, I find that the Landlord is in breach of section 19 of the *Act* by hold and overpayment of these deposits in the amount of \$1,250.00 for this tenancy, consisting of an overpayment of \$625.00 in a security deposit and \$625.00 in a pet damage deposit.

Pursuant to section 19(2) of the *Act*, these Tenants are within their rights to withhold the \$1,250.00 overpayment of these deposits from their next month's rent.

As for the Notice to end tenancy, I find that the Landlord served the Notice to End Tenancy on February 5, 2021, by placing the Notice in the Tenants' mailbox, which is an approved method of service provided for under section 88 of the *Act*. Section 90 of the *Act* states that unless it is shown otherwise, a document served in this manner is deemed to have been received three days after the day in which the notice was placed in the mailbox.

When documents are considered to have been received

90 *A document given or served in accordance with section 88 [how to give or serve documents generally] or 89 [special rules for certain documents], unless earlier received, is deemed to be received as follows:*

(a) if given or served by mail, on the 5th day after it is mailed;

- (b) if given or served by fax, on the 3rd day after it is faxed;*
- (c) if given or served by attaching a copy of the document to a door or other place, on the 3rd day after it is attached;*
- (d) if given or served by leaving a copy of the document in a mailbox or mail slot, on the 3rd day after it is left.*

Without evidence to the contrary, I find that the Tenants were deemed to have received the Notice on February 8, 2021.

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

Landlord's notice: non-payment of rent

- 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 [form and content of notice to end tenancy].*
- (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.*

Accordingly, I find that the Tenants had until February 13, 2021, to either pay the outstanding rent as indicated on the notice or file an application for dispute resolution to dispute the Notice. I have reviewed the Tenants' application and find that they filed to dispute the Notice on February 12, 2021, with the legislated timeline.

I accept the testimony of the Landlord that they received \$6,000.00 in rent from these Tenants on February 1, 2021. As it has been determined that the monthly rent for this tenancy is \$6,000.00 and the Landlord has agreed that they received \$6,000.00 for the February 2021 rent, I find that the February 2021 rent had been paid in full and that there was no outstanding rent due for this tenancy at the time this notice was issued.

Therefore, I grant the Tenants' application to cancel the Notice issued February 5, 2021, and I find the Notice is of no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for their application. The Tenants are granted permission to take a one-time deduction of \$100.00 from their next month's rent in full satisfaction of this awarded amount.

Conclusion

I grant the Tenants' application, and I find the 10-Day Notice issued February 5, 2021, of no force or effect under the *Act*. The tenancy will continue until ended in accordance with the *Act*.

I grant the Tenants permission to take a one-time deduction of \$100.00 from their next month's rent.

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: May 19, 2021

Residential Tenancy Branch