



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, OLC, FF

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 (the “Notice”), issued on April 21, 2021, to restrict or set conditions on the landlord’s right to enter the rental unit and to recover the cost of the filing fee.

The landlords appeared. The tenants’ daughter appeared on their behalf.

Preliminary Matters

At the outset of the hearing the tenants representative GG stated that they are the oldest child of the tenants and that both of their parents passed away, in April 2021. GG stated that their parents left no Will, naming an executor and no one in the family wants to apply to be the administrator of the estate. GG stated that the government should be responsible for dealing with the disposal of their parents’ belongings when there is no money in the estate.

GG stated that the Notice was received prior to the passing of their parents and they filed the application on their behalf. GG does not deny that rent was owed; however, none of their family would have the money to pay the rent and in any event it is not their responsibility to pay their parents debt.

Both parties agreed that the tenancy has ended. The landlords seek a monetary order for the unpaid rent pursuant to section 55(1.1) of the Act.

Both parties raised the issue of the tenants' belongings and want that issue to be resolved at the hearing.

Issues to be Decided

Are the landlord's entitled to a monetary order for unpaid rent, pursuant to section 55(1.1) of the Act?

Should any order be made on the personal items left behind by the tenants?

Background and Evidence

The tenancy agreement submitted in evidence show this agreement was entered into on August 30, 2020. Rent in the amount of \$5,000.00 was payable on the first day of each month. A security deposit of \$5,100.00 was paid by the tenants.

The landlords testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, on January 15, 2021, and the second Notice on April 22, 2021. The landlords stated that the tenants made several payments towards rent; however, the tenants were still in rent arrears and the total amount of rent owed on April 22, 2021, was the amount of \$13,800.00. Filed in evidence are copies of the notice to end tenancy dated January 15, 2021, and a copy of the Notice.

The landlords seek a monetary order for the unpaid rent and to offset that amount with the security deposit as the tenancy has ended.

Although the issue of the tenants belongings was not before me; however, both the landlords and GG requested me to resolve this issue at this hearing.

GG stated that they have removed any personal belongings of their parents that have sentimental value to the family. GG stated all next of kin live out of the province and have no intention of retrieving the items that the tenants left behind. GG stated that the items left behind do not cover the cost of the rent arrears owed to the landlords or the cost of the storage fees that the landlords have incurred. GG stated that because there is no one in the family willing to take responsibility, including themselves, of the disposal of the personal items left behind as they are not within their control.

The landlords stated that they have determined that the items left behind have been abandoned and have paid to have the items stored. The landlords stated the original cost to have the items packaged and stored was \$3,200.00 and are incurring a fee of

\$800.00 for storage per month. The landlords stated that it is unreasonable that they would have indefinitely have to store the items and continue to incur costs.

Analysis

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

In this case, GG applied on behalf of the tenants as there is no Will, and no one in their family want to apply to be the administrator of the estate of the tenants. I find at this time the only party willing to represent the tenants, to some point, is GG.

GG applied to dispute the Notice that was received prior to the passing of their parents. The tenancy is now over; however, when the Notice was given, received, and disputed by the tenants, I find I must grant an order for the unpaid rent, under section 55(1.1) of the Act. As there was no dispute on the amount owed, I find I must grant the landlords a monetary order for the unpaid rent in the amount of **\$13,800.00**.

In this case, the tenancy is over. I find it reasonable to offset the amount of \$13,800.00 with the security deposit held in trust in the amount of \$5,100.00. Therefore, I find the landlords are entitled to a formal monetary order for the balance due in the amount of **\$8,700.00**.

In this case, the tenants are deceased. The family has removed personal items that they determined necessary or what was sentimental to the family and have left the balance. GG has indicated that there is no Will, an no administrator is going to be appointed and it is the governments issue to resolve.

The landlord has been storing the tenants' personal property in a safe manner.

I find it reasonable to conclude that the items have been abandoned as the only person coming forward to provide information is the oldest daughter GG, on behalf of the tenants. The government or the Office of the Public Guardian and Trustee is not responsible for disposal of belongings.

The Office of the Public Guardian and Trustee only gets involved if there is money in an estate in excess of their fees to be administered to debts, and to any beneficiaries. The

evidence of the tenants' daughter was there is no money in the estate and the amount owed to the landlords is greater than the value of the goods.

I find there is no provision under the Act, or Regulations that a landlord is required to retain the personal property of deceased tenants indefinitely. Especially when they have been informed that no one will taking the responsibility to deal with the issue of the remaining belongings.

I find the landlords are entitled to use the provision set out in Part 5 of the Residential Tenancy Regulations – Abandonment of Personal Property. The landlords have already been storing the items for a period of time. The landlords are entitled to start the calculation of time from the date the items were stored.

Conclusion

The tenants failed to pay rent. The landlords are granted a monetary order for the unpaid rent and may keep the security deposit to offset the amount owed.

The tenancy has ended, and the landlords have been storing the tenants' personal property. No one has or is willing to come forward to accept responsibility for dealing with the remaining items left behind. I find the landlords are entitled to use the provisions set out in the Regulation when dealing with abandonment of personal property.

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: June 23, 2021

Residential Tenancy Branch