



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”), issued on April 2, 2021, to cancel a Two Month Notice for Landlord’s Use of Property (the “Notice 2”), issued March 10, 2021 and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not recording the hearing.

The tenants confirmed they received the landlord’s evidence. The tenants confirmed they did not submit any evidence to support their application.

Preliminary matter

At the outset of the hearing I was informed by the parties that there is another application for dispute resolution filed by the tenants on March 26, 2021. This matter commenced on July 13, 2021 and was adjourned to December 14, 2021. The issue before the Arbitrator were to determine if the tenants had overpaid rent and utilities, this is in dispute. I have reviewed the interim decision and it makes no findings or orders on this issue, specifically it does not grant the tenants the authority to withhold rent. I have noted the file number on the covering page of this decision.

Issues to be Decided

Should the Notice be cancelled?
Should the Notice 2 be cancelled?

Background and Evidence

The parties agreed that the tenants were served with the Notice on April 2, 2021. The Notice indicates that the tenants failed to pay \$500.00 for March 2021 and \$1,750.00 for April 2021.

The tenants testified that they withheld \$500.00 from the March 2021, rent because they believe there is an overpayment in rent and utilities. The tenants stated April 2021, was not due as they had an agreement with the landlord that it could be paid at the end of the month. The tenants stated at the end of April 2021, they paid the rent; however, they again withheld \$500.00 from April 2021 rent. The tenants confirmed they have paid no rent for May, June, and July 2021.

Counsel for the landlord submits the tenants have no authority under the Act to withhold the rent. Counsel submits the tenant's application alleging an overpayment of rent and utilities is disputed by the landlord and a decision has not been made.

Analysis

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

I have reviewed the Notice filed in evidence; I find the Notice was completed in accordance with section 52 of the Act.

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator

In this case, the tenants had made an application for dispute resolution claiming monetary relief for an alleged overpayment of rent, over payment of utilities and other relief. This claim is disputed by the landlords and a decision has not been made on this issue.

While I accept if an overpayment of rent has been made that overpayment may be deducted from the rent; this would not include utilities or any other relief. However, the tenants filed an application to determine if they had made an overpayment, which has not been determined by the Arbitrator.

In this case, the tenants withheld rent of \$500.00 for March 2021, knowing their application had not yet been decided. This amount was listed in the Notice. The tenant did not pay the \$500.00 within 5 days of receiving the Notice. I find the tenants did not have the authority under the Act, to withhold the rent as their application claiming an overpayment of rent has not been proven, and the Arbitrator did not give the tenants authority under the Act to withhold the rent even on an interim basis.

I find the tenants were not entitled to withhold the rent, until such time as a decision was made on their application. A tenant cannot withhold rent simply because they feel they are entitled to do so. The overpayment of rent has not been proven nor did the tenants have the authority of an Arbitrator to deduct any amount from the rent and made the choice to prematurely withhold the rent.

Section 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.

Based on the above, I find the Notice is valid and remains in full force and effect. I find the tenancy legally ended on April 12, 2021, which is the effective vacancy date of the Notice. Therefore, I dismiss the tenants' application to cancel the Notice.

The evidence of both parties that the tenants withheld \$500.00 from March 2021, rent, \$500.00 from April 2021, rent and have failed to pay rent for May, June, and July 2021 totalling the amount of \$5,350.00.

Order of possession for the landlord

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 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-*

payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act. At the hearing the landlord was agreeable to give the tenants until July 31, 2021 to vacate the premise. Therefore, I find the landlord is entitled to an order of possession, effective **July 31, 2021**, a copy of this order must be served upon 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 is entitled to a monetary order for unpaid rent, pursuant to section 55 (1.1) of the Act, from March 2021 to July 2021, in the total amount of **\$5,350.00**. 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.

In this case the tenants have also file an application to cancel Notice 2, as I have ended the tenancy based on unpaid rent, I find I cannot end a tenancy twice. Therefore, I cancel the 2 Notice and it has no force or effect.

Conclusion

The tenants' application to cancel the Notice and the Notice 2 is dismissed. The landlord is granted an order of possession and a monetary order for the unpaid rent pursuant to section 55 of the Act.

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: July 23, 2021

Residential Tenancy Branch