



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR RR FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 46;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:58 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord and his wife ("**LL**") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, LL, and I were the only ones who had called into this teleconference.

Preliminary Issue - Service

The landlord testified that he was served with the tenants' notice of dispute resolution form and supporting evidence package about "10 or 15 days" prior to the hearing. LL testified that it was "sometime in August". Despite not having an exact date, and despite the range provided to me by the landlord including dates which fall outside of the when an applicant can file evidence (14 days prior to the hearing), I proceeded with the hearing, as the landlord was prepared to argue his points and did not raise an objection to late service.

LL submitted documentary evidence to the Residential Tenancy Branch (the "**RTB**") late in the evening before the hearing. It consisted of a tenancy agreement dated November 25, 2020, a copy of the Notice, a monetary order worksheet setting out the arrears the landlord claims the tenants owe, and screenshots of e-transfers to LL made by the tenants' mother.

Rule 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, **the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.**

[emphasis added]

The landlord's evidence was not served in the required time frame. He and LL testified that they were unaware of this rule. I therefore exclude the screenshots from evidence, as I cannot say if the tenants are aware of their existence. I permit the tenancy agreement and Notice into evidence, despite being filed outside of the permitted timeframe, as these are documents that the tenants already have, and should reasonably have known would be relied upon at this proceeding (the tenants submitted a copy of the Notice in their evidence package). The monetary order worksheet is not evidence *per se*, rather it is a form completed by a landlord showing what arrears it says are owed. I permitted the landlord to give oral evidence as to its contents.

Preliminary Issue – Effect of Tenants' Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

As such, even though this is the tenants' application, the landlord bears the burden to prove it is more likely than not that the Notice is valid. The landlord must meet this burden even if the tenants do not attend.

However, the tenants bear the onus to prove they are entitled to a rent reduction. As they have not attended the hearing, they cannot discharge this onus. As such, I dismiss this portion of their application, without leave to reapply.

Rule 7.4 states:

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As such, I will not consider any of the evidence submitted by the tenants in advance of the hearing when adjudicating the application to cancel the Notice.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

If not, is the landlord entitled to:

- 1) an order of possession; and
- 2) a monetary order for the arrears specified on the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord and his wife, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord submitted a copy of a tenancy agreement naming himself and LL as landlords and the tenants and the tenants' mother as tenants. The landlord testified that the tenants are mature adults (he estimated that they are in their 40s). The tenancy was for a fixed term, starting November 25, 2020 and ending June 1, 2021. It was signed by the landlord, LL, and the tenants' mother. Monthly rent was \$1,200. The tenancy agreement required the tenants and their mother to pay a security deposit of \$600. LL testified that they only paid \$500 of the deposit, which the landlord continues to hold in trust.

The landlord testified that he did not intend to create an agreement with the tenants, but only with their mother. This is why, he says, the tenants did not sign the agreement. He did not explain why if they were not intended to be parties to the agreement, the tenants were listed as tenants on the first page of the tenancy agreement.

The landlord testified that the tenants and their mother fell behind in their rent starting in February 2021 and continue to be in arrears. He and LL testified that they made payments as follows:

Date	Owed	Paid	Balance
01-Feb-21	\$1,200.00		\$1,200.00
22-Feb-21		\$300.00	\$900.00
23-Feb-21		\$200.00	\$700.00
01-Mar-21	\$1,200.00		\$1,900.00
03-Mar-21		\$600.00	\$1,300.00
05-Mar-21		\$500.00	\$800.00
13-Mar-21		\$400.00	\$400.00
01-Apr-21	\$1,200.00		\$1,600.00
07-Apr-21		\$300.00	\$1,300.00
01-May-21	\$1,200.00		\$2,500.00
21-May-21		\$300.00	\$2,200.00
01-Jun-21	\$1,200.00		\$3,400.00
01-Jul-21	\$1,200.00		\$4,600.00
01-Aug-21	\$1,200.00		\$5,800.00
Total			\$5,800.00

The landlord testified that the tenants' mother indicated that they would move out in July 2021. On July 3, 2021, the tenants' mother vacated the rental unit, but her children remained.

The landlord testified that he served the tenants with the Notice on July 9, 2021 by posting it on the door of the rental unit. It listed the arrears owed as of July 9, 2021 as \$4,600. It listed an effective date of July 18, 2021. The Notice listed the tenants and the tenants' mother as tenants.

The tenants filed their application to dispute it on July 16, 2021. It indicated that the Notice was served on July 7, 2021.

Analysis

I accept the landlord and LL's undisputed testimony in its entirety. I find that, as of the date of this hearing, the tenants are in rental arrears of \$5,800.

However, I find that, as the tenancy agreement named the tenants as tenants, that they are parties to the tenancy agreement, notwithstanding the fact that they did not sign the agreement. It is not uncommon for a single tenant to sign a tenancy agreement on behalf of one or more other tenants. I find this was the case with this agreement.

I find that the Notice was served on July 9, 2021 by positing it on the door of the rental unit. Section 90 of the Act states that documents served this way are deemed to have

been served three days later. As such, I deem the Notice to have been served on July 12, 2021

I find that the tenants failed to pay \$4,600 in rent as of July 9, 2021. Section 26 of the Act states:

Rules about payment and non-payment of rent

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.

As such, the tenants were responsible for paying rent when it was due, notwithstanding any basis for a rent reduction the tenants thought they were entitled to (which they may have believed, given they were seeking a rent reduction in this application).

As such, I find that the Notice was issued for valid reasons. I find that the Notice meets the form and content requirements of section 52 of the Act. As such, I dismiss the tenants' application to cancel the Notice, without leave to reapply.

Section 55(1) and (1.1) state:

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.

As such, I order the tenants pay the landlord \$5,800, representing unpaid rental arrears from February 1, 2021 to August 1, 2021, as specified above.

Additionally, I grant the landlord an order of possession effective at 1:00 pm two days after he serves the tenants with a copy of this decision and attached orders.

Pursuant to section 72(1) of the Act, as the tenants have been unsuccessful in their application, I dismiss their claim to recover the filing fee.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit of \$500 in partial satisfaction of the monetary order made above.

Conclusion

Pursuant to sections 55, 67, and 72 of the Act, I order that the tenants pay the landlord \$5,300, representing the rent arrears (\$5,800) less the security deposit (\$500)

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord at 1:00 pm.

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: August 26, 2021

Residential Tenancy Branch