



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR,OLC

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 July 2, 2021.

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

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on January 1, 2021. Rent in the amount of \$1,400.00, plus \$100.00 for utilities, for a total rent due of \$1,500.00 was payable on the first of each month. A security deposit of \$700.00 and a pet damage deposit of \$700.00 was paid by the tenants.

The tenant testified that they agreed to the tenancy commencing on January 1, 2021, as they wanted the landlord to hold the property for them and they would move in at the end of January 2021. The tenant stated that they paid the landlord the amount of \$900.00.

The tenant testified that the week before they were to move into the premises the landlord was still doing some painting and the rental unit was not properly clean. As a result, they did not feel that the landlord was entitled to the full amount of rent and have not paid the amount of \$500.00 that was owed.

The landlord testified that at the time the Notice was issued the tenant owed \$630.00. The landlord provided a detail calculation of the money received from the tenants totalling the amount of \$8,170.00. The tenants acknowledged this amount was paid towards rent and the security deposit and pet damage deposit.

The landlord testified that the total money the tenants were required to pay was the amount of \$8,800.00, and when subtracting the \$8,170.00 left a balance due of unpaid rent the amount of \$630.00.

The tenant argued that there was an agreement that they would pay \$50.00 towards the arrears each month commencing March 2021. The tenant stated they have not paid any amount towards the arrears.

The landlord responded there was no such agreement.

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.*

...

How to end a tenancy is defined in Part 4 of the Act.

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].

...

(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.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of 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, that they paid for emergency repairs as defined in the Act or there was an illegal rent increase.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenant's application must be dismissed as the tenant admitted rent was not paid within 5 days after receiving the Notice because they believed the landlord has breached the Act.

However, the tenants did not have the authority under the Act to deduct any portion from the rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

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, effective **two days** after service on 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.

At the hearing the landlord agreed that they would not enforce the order of possession until October 31, 2021, only if the tenant pays occupancy rent \$1,500.00 in full today, October 1, 2021.

As I am satisfied that the tenants have failed to pay rent, I find the landlord is entitled to a monetary order for the unpaid pursuant to section 55 (1.1) of the Act, rent in the amount of **\$630.00**. I grant the landlord a formal monetary order in this amount. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession and a monetary order for the unpaid 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: October 01, 2021

Residential Tenancy Branch