



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, RR, OLC, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For an order of possession for unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice" issued on October 3, 2021;
2. To be allowed to reduce rent for repairs, service or facilities agreed upon but not provided;
3. For a monetary compensation for loss or other money owed;
4. To have the landlord comply with the Act; and
5. To recover the cost of filing the application.

Only the landlord appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Landlords' application

The landlord testified that they served each of the tenants with a copy of their Application for Dispute Resolution and Notice of Hearing, by registered mail sent on October 16, 2021. Filed in evidence are copy of the tracking numbers.

I find the tenants were served in accordance with section 89 of the Act.

Tenants' application

This matter was set for hearing by telephone conference call at 9:30 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenants did not attend the hearing by 9:40 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenants' application without leave to reapply.

I note the tenants were given the instructions for the proceeding on October 14, 2021, when they were provided the Notice of dispute Resolution Proceedings attached to their application for dispute resolution. I have reviewed those documents and confirmed that the tenants were provided the correct telephone number to call into the hearing and the correct participant access code.

I further note that on November 13, 2021, the tenants were sent a notification reminder of todays hearing, which again informs that the instructions for the proceeding were provided in the Notice of Dispute Resolution Proceedings. It further informs them if you do not attend this hearing you will lose the opportunity to provided information that could impact the results. The proceeding will continue even if one party does not attend.

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?

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for the unpaid rent?

Background and Evidence

The landlord testified that the tenancy was to start on October 1, 2021. Rent in the amount of \$2,800.00 was payable on the 1st day of each month. The landlord stated the tenants were required to pay a security deposit of \$1,500.00. However, they only paid the amount of \$1,200.00. Filed in evidence is a copy of the tenancy agreement.

The landlord testified that they gave the tenants the key to the premises on September 12, 2021, as the tenants wanted to paint the rental unit to a colour that they liked. The landlord stated in exchange the tenants offered to power washing and cleaning the rental unit. Filed in evidence is a text message from the tenant dated September 6, 2021, which supports the landlord's testimony.

The landlord testified that the tenants decided to get a professional cleaner and wanted to deduct the amount \$534.00 for cleaning and \$1,400.00 for the work they had done from October 2021, rent. The landlord stated that they did not agree to the deductions from October 2021, rent as the tenants were given the property early without cost so they could make the home suitable for their needs.

The landlord stated that the tenants then sent an email transfer on October 2, 2021, in the amount of \$1,246.00; however, they got notification that the etransfer was cancelled and they could no longer deposit the funds. Filed in evidence is a copy of the etransfer cancellation notification.

The landlord testified that the tenants did not pay any rent for October 2021 and have failed to pay rent for November 2021. The landlord seeks to recover unpaid rent in the amount of \$5,600.00.

The tenants written submission reads in part the following,

“the place was way filthier than we had ever expected by accepted it in our hearts a little grudgingly as we had been lied to, we decided to get a professional cleaner to do a move out clean \$534, on Oct 1. we emailed the rent...minus the move out clean and half a month rent \$1400.00 that was promised...the landlord denied our agreement and would not except the email money transfer of \$1246.00”

[Reproduce as written.]

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, to recover an illegal rent increase or they paid for an emergency repair.

In this case, I am satisfied that the tenants did not have the authority under the Act to withhold rent for October and November 2021 as defined in the Act.

The tenants were given possession of the property earlier than their tenancy was to begin so they could make it suitable for their family, such as painting. The tenants offered on September 6, 2021, to do the cleaning and some other maintenance if they were given possession early. This was a reasonable and they did not pay any rent for September 2021.

The tenants then decided to deduct the amount of \$534.00 for cleaning and \$1,400.00 for work they did, prior to their tenancy commencing from October 2021, rent. I find this is unreasonable and contrary to the text message they sent to the landlord on September 6, 2021. As it was the tenants who offered to do maintenance, cleaning in exchange for them to be allowed to paint the rental unit, prior to the commencement of their tenancy.

I also note that the tenants' e-transfer in the amount of \$1,246.00 that was sent on October 2, 2021, not on the 1st was only for a portion of the rent due on October 1, 2021. That e-transfer was then cancelled by the tenants on October 4, 2021. The notification filed in evidence does not say the e-transfer was declined by the recipient or that it had expired which is contrary to their written submission. The notification without doubt shows the e-transfer was cancelled by the tenants before the landlord was able to accept the funds.

The tenants were served with the Notice on October 3, 2021. The tenants were required to pay the full rent within 5 days of receiving the notice, as they did not have the landlord's written consent to make deductions from the rent.

If the tenants truly felt they were entitled to compensation they still were required to pay their rent. At no time does the tenant have the right to simply withhold rent because they feel they are entitled to do so.

While the tenants did dispute the Notice within the statutory time limit, I find the tenants had no authority under the Act to withhold rent for October 2021.

I find the tenants breached the Act when they failed to pay rent for October 2021, and has continued to breach the Act, by failure to pay subsequent rent. I find the Notice issued on October 3, 2021, is valid and remains in full force and effect. I find the tenancy

legally ended on October 14, 2021. Therefore, I find the landlord is entitled to an order of possession.

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.

The landlords have not received rent for October and November 2021. I find the landlord is entitled to recover the unpaid rent in the total amount of **\$5,600.00**.

I find that the landlords have established a total monetary claim of **\$5,700.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I find it appropriate to offset the above order with the tenants' security deposit. I order that the landlord retain the security deposit of **\$1,200.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$4,500.00**.

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.

I further caution the tenants that if failure to pay rent becomes a pattern that comes to the attention of the director. Then they could be referred to the Compliance and Enforcement Unit, which could result in serious administrative penalties being applied or other actions taken.

Conclusion

The tenants' application is dismissed without leave to reapply. The landlords are granted an order of possession and a monetary order and may keep the security deposit to offset the amount owed.

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: November 15, 2021

Residential Tenancy Branch