



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ET, CNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking to end the tenancy early and obtain an order of possession, pursuant to section 56 of the Act.

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. All parties confirmed under affirmation they were not recording the hearing.

Although the tenant TL, did not appear, I am satisfied that TL was served with the landlord's application by email sent on December 10, 2021 to the email addresses the tenants' provided to the landlord for service. I find TL has been duly served under section 89 of the Act. Filed in evidence is a copy of the email showing it was sent to both tenants.

At the outset of the hearing the parties agreed that the tenant's application scheduled for January 27, 2022, should be joined to be heard at today's hearing. I have noted the file number on the covering page of the Decision.

The tenant's Application for Dispute Resolution is seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on September 11, 2021.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession, pursuant to section 55 or 56 of the Act?

Is the landlord entitled to a monetary order pursuant to section 55(1.1) of the Act?

Background and Evidence

The landlords provided a copy of a tenancy agreement signed by the parties. The tenancy agreement shows MH and TL as co-tenants. The tenancy commenced on July 16, 2021. Rent in the amount of \$2,100.00 was payable on the first of each month. The tenants paid a security deposit of \$1,050.00 and a pet damage deposit of \$1,050.00.

The tenant testified that their bank account was frozen in September 2021. The tenant stated they had to open a new bank account and get new cheques which would take about 10 business days. The tenant stated that the landlord was not prepared to wait and they were served with the Notice.

The tenant testified that they never did give the landlord new cheques and they have not paid any rent since September 2021. The tenant stated that they disputed the Notice because it would give them more time.

Counsel for the landlord stated they are seeking an order of possession based on 2 days and a monetary order for the unpaid rent which currently totals \$8,400.00 and would like to offset the security deposit and pet damage deposit to reduce the amount owed by the tenants.

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.

In this case, whether or not the tenants bank account was frozen, if they were able to open a new account they clearly were able to access the rent money if they truly had it. The tenants could have provided the landlord with a money order, certified cheque or even sent an e-transfer. I find the tenants failed to pay the rent for September within five days after receiving the Notice as required by the Act. Therefore, I find the Notice is valid and remains in full force and effect. I find the tenancy legally ended on September 21, 2021 and the tenants are overholding the premises. Therefore, I dismiss the tenant's 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. 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.

As the tenants have not paid rent for September, October, November and December 2021, I find that the landlord is entitled to a monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$8,400.00**.

I find it appropriate in this case, to offset the above monetary order with the tenants' security deposit of \$1,050.00 and pet damage deposit of \$1,050.00 to reduce the amount owed by the tenants. Therefore, I grant the landlord a formal order for the balance due in the amount of **\$6,300.00**. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I caution the tenants that they could be referred to the Compliance and Enforcement Unit for investigation if a pattern of unpaid rent is established and further legal action could be taken.

As I have ended the tenancy based on the basis of unpaid rent, I find I do not need to consider the merits of the landlord's application for an early end to tenancy. Therefore, I decline to award the filing fee.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession and a monetary order for 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: December 23, 2021

Residential Tenancy Branch