



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNR, CNC-MT, OLC**

OPR-DR, MNR-DR, FFL

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with cross-applications filed by both the tenants and the landlord pursuant the *Act*.

The tenants applied for:

- Authorization to recover the filing fee from the other party pursuant to section 72;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66; and
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 62.

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Neither of the tenants attended the hearing although I left the teleconference hearing connection open until 11:20 a.m. to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. 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 and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified she served each of the tenants with a Notice of Dispute Resolution Hearing package by registered mail on October 8, 2021. The tracking numbers for the mailings are recorded on the cover page of this decision. The tenants are deemed served with the landlord's Notice of Dispute Resolution Hearing packages five days after being sent by registered mail, or October 13, 2021 in accordance with sections 89 and 90 of the *Act*.

This hearing proceeded in the absence of the tenants pursuant to Rule 7.3 of the RTB Rules of Procedure.

Preliminary Issue

The landlord named the tenants' son, an adult not named on the tenancy agreement, as a respondent in her application. I advised the landlord that only parties to the tenancy agreement are responsible for the obligations of the tenancy and as such, I dismissed the application for a monetary order against the son. The son's name does not appear on the cover page of this decision.

Issue(s) to be Decided

Should the landlord's notice to end tenancy be upheld or cancelled?

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following undisputed testimony. The tenancy began on May 1, 2020 with rent set at \$950.00 per month payable on the first day of each month. The landlord collected a security deposit of \$450.00 which she continues to hold.

The landlord sold the rental unit and served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use on August 23, 2021 because the new owner wanted to occupy it.

The tenants did not pay rent for September and on September 10th, the landlord served the tenants with a notice to end tenancy for unpaid rent/utilities by personally serving their son, an adult who lives with the tenants. The landlord testified that the tenants have not paid any rent to her subsequent to being served with either notice to end tenancy, and that she has compensated the tenants with free rent for the month of October for serving them with the 2 Month Notice to End Tenancy for Landlord's Use. The landlord seeks compensation for unpaid rent for the month of September 2021 and her filing fee.

The landlord testified that the tenants vacated the rental unit by the end of October and that the new owners are now occupying the house. She no longer requires an Order of Possession.

Analysis

Based on the undisputed testimony of the landlord, I am satisfied the tenants have vacated the property and I treat this as the tenants' acceptance of the validity of the landlord's notices to end tenancy. For greater certainty, I order that the tenancy ended on October 31, 2021, the date the tenants vacated the rental unit, pursuant to section 44(1)(f). As such, it is not necessary for me to determine on the merits whether the Notices to End tenancy were valid and I make no findings with respect to their validities. It is therefore not necessary for an order of possession to be granted.

The landlord gave undisputed testimony that the tenants failed to pay rent in the amount of \$950.00 for the month of September 2021, contrary to section 26 of the *Act*. Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. I award the landlord compensation in the amount of \$950.00 against the tenants.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenants' security in the amount of \$475.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' full security deposit in partial satisfaction of the monetary award.

Item	Amount
Unpaid rent for September 2021	\$950.00
Filing fee	\$100.00
Less security deposit	(\$475.00)
Total	\$575.00

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord's application seeking an order of possession is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour in the amount of \$575.00. The tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 28, 2022

Residential Tenancy Branch