



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, OLC, FFT, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross-applications filed by the parties. On September 27, 2021, the Tenants made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking to restrict the Landlords’ right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On October 4, 2021, the Landlords made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent and Utilities based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for unpaid rent and utilities pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants and both Landlords attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Service of documents was discussed, and it was determined that all documents were served in accordance with the *Act* and Rules of Procedure. As such, I am satisfied that

both parties were duly served the respective Notice of Hearing and evidence packages. As well, I have accepted the parties' evidence and this evidence will be considered when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claims were dismissed. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recover the filing fee?
- Are the Landlords entitled to a Monetary Order for compensation?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 16, 2021 as a fixed term tenancy ending on June 15, 2022; however, the tenancy ended when the Tenants gave up vacant possession of the rental unit on or around October 3, 2021. Rent was currently established at an amount of \$1,850.00 per month and was due on the 16th day of each month. A security deposit of \$925.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

Landlord V.Z. advised that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenants on September 23, 2021 by being posted to the Tenants' door. He testified that \$1,850.00 was owing for rent on September 16, 2021 and that the Tenants did not pay this rent. Thus, the Notice was served. He submitted that the Tenants informed him that they vacated the rental unit on or around October 5, 2021 and he stated that they managed to re-rent the unit on November 1, 2021. Since the Tenants have given up vacant possession of the rental unit, they no longer need an Order of Possession. However, at this point, the Landlords are only seeking a Monetary Order in the amount of **\$1,850.00** for rental arrears for September 2021. In addition, he stated that the Tenants did not pay any rent for October 16 to October 31, 2021 and that the Tenants did not have any authority to withhold any rent at all. The effective end date of the tenancy was noted on the Notice as October 6, 2021.

Tenant N.G. made many submissions with respect to how she believed that she did not feel "safe" in the rental unit, and this was her rationale for withholding the rent. However, she was provided with a list of all the reasons why they were permitted under the *Act* to legally withhold the rent. She confirmed that their circumstances as described did not fall into any of those categories. As well, she acknowledged that she did not have any written consent from the Landlords to withhold the rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlords comply with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the

rent. Should the Tenants not pay the rent when it is due, Section 46 of the *Act* allows the Landlords to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

Section 33 of the *Act* outlines what would be considered an emergency repair. Furthermore, the Tenants would be entitled to deduct an amount from their rent for the cost to fix an issue provided that this issue fell under the definition of an emergency repair, and as long as the Tenants then followed the requirements of the *Act*.

Section 52 of the *Act* requires that any Notice to end tenancy issued by the Landlords must be signed and dated by the Landlords, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenants were served the Notice on September 23, 2021. According to Section 46(4) of the *Act*, the Tenants then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was posted on the Tenants' door on September 23, 2021, it would have been deemed received on September 26, 2021. Therefore, the Tenants must have paid the rent in full or disputed the Notice by October 1, 2021 at the latest. The undisputed evidence is that the Tenants did not pay the rent in full by this date to cancel the Notice.

While they disputed this Notice, I do not find that they have paid for any emergency repairs, nor did they have any valid reason under the *Act* for withholding the rent. When reviewing the totality of the evidence before me, it is evident that the Tenants were unhappy with some issues during the tenancy, and it was their mistaken belief that they could simply and arbitrarily withhold the rent as a means to address these issues. Given that I am not satisfied that the Tenants had any authority under the *Act* to withhold the rent, I find that the Tenants did not have a valid reason under the *Act* to do so.

Consequently, I am satisfied that they breached the *Act* and jeopardized their tenancy.

As the Landlords' Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlords are entitled to an Order of Possession for unpaid rent pursuant to Sections 46 and 55 of the *Act*. However, as the Tenants have already given up vacant possession of the rental unit, I find unnecessary to grant this Order.

In addition, I am satisfied that the Landlords are entitled to a monetary award for the rental arrears for September 2021. As such, I grant the Landlords a monetary award in the amount of **\$1,850.00**.

As the Tenants were not successful in their Application, I find that the Tenants are not entitled to recover the \$100.00 filing fee.

As the Landlords were successful in their Application, I find that the Landlords are entitled to recover the \$100.00 filing fee. They elected not to apply the security deposit towards this debt.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlords a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlords

Item	Amount
Rental arrears for September 2021	\$1,850.00
Filing Fee	\$100.00
Total Monetary Award	\$1,950.00

Conclusion

The Tenants' Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, the Landlords are provided with a Monetary Order in the amount of **\$1,950.00** in the above terms, and 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: February 8, 2022

Residential Tenancy Branch