



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served a 10 Day Notice dated December 7, 2021 ("10 Day Notice"); and to recover the \$100.00 cost of their Application filing fee.

The Tenants, E.G. and P.V., and an agent for the Landlord, S.M. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One witness for the Landlord, S.M., was also present and provided affirmed testimony.

During the hearing the Tenants and the Agent were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided his email address in the Application and he confirmed it in the hearing. The Tenants provided their email address in the hearing. The Parties also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only

consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for unpaid rent, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on November 1, 2019, ran to December 1, 2020, and then operated on a month-to-month or periodic basis. The Parties agreed that the Tenants are required by the tenancy agreement to pay the Landlord a monthly rent of \$2,200.00, due on the first day of each month. They agreed that the Tenants paid the Landlord a security deposit of \$1,100.00, and were required to pay a pet damage deposit of \$1,100.00; however, they confirmed that this had not been paid.

The evidence before me is that the Landlord served the Tenants with a 10 Day Notice that was signed and dated December 7, 2021, it has the rental unit address, and it was served via registered mail on December 7, 2021. The 10 Day Notice had an effective vacancy date of December 17, 2021, which is corrected by the Act to December 22, 2021. The 10 Day Notice was served on the grounds that the Tenants failed to pay \$2,200.00 to the Landlord when it was due to him on December 1, 2021.

In the hearing, the Parties agreed that the Tenants paid the Landlord \$1,100.00 rent on December 15, 2021, and \$1,100.00 on December 17, 2021.

The Parties agreed that the following chart sets out the Tenants' rent payments to the Landlord for the last few months.

Date Rent Due	Amount Owing	Amount Received	Amount Owing
Dec 1, 2021	\$2,200.00	\$1100.00 Dec 15 \$1100.00 Dec 17	\$0.00

Jan 1, 2022	\$2200.00	\$900.00 Jan 9 \$800.00 Jan 13	\$500.00
Feb 1, 2022	\$2,700.00	\$2,200.00 Feb 8	\$500.00
Mar 1, 2022	\$2,200.00	\$1,975.00	\$725.00
	TOTAL OWING		\$725.00

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent. There is no evidence before me that the Tenants had a right under the Act to deduct any rent owing.

Section 46 (1) of the Act outlines the grounds on which to issue a 10 Day Notice for non-payment of rent:

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.

...

- (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.

...

The Parties agreed that the Tenants were served with the 10 Day Notice via registered mail on December 7, 2021. Section 90 states that documents served by registered mail are deemed served five days after being mailed. Accordingly, the Tenants are deemed by section 90 to have received the 10 Day Notice on December 12, 2022, five days after it was mailed.

Section 46 (1) states that a landlord may end a tenancy, if the tenant takes no action for 10 days after the Notice is deemed served. However, the Tenants complied with section 46 (4), by paying their rent in full within five days of being served with the 10 Day Notice. As such, and pursuant to section 46 (4) (a), I find that since the Tenants paid their rent within five days of service of the 10 Day Notice, the that therefore, “notice has no effect”.

Based on the evidence and authorities before me in this matter, I cancel the 10 Day Notice and find that it is void and unenforceable.

While the Tenants may owe the Landlord unpaid rent from January and March 2022, the 10 Day Notice applied to December 2021 rent, only, and the Tenants complied with the Act for that month. Accordingly, I have no authority to grant the Landlord a monetary order for unpaid rent owing as of the hearing date.

Conclusion

The Landlord is unsuccessful in their Application, as the Tenants paid their December rent within five days of receiving the 10 Day Notice in December 2021. Pursuant to section 46 (4) (a) of the Act, the 10 Day Notice is cancelled and is void and unenforceable. The Landlord’s Application is dismissed wholly without leave to reapply.

The tenancy will continue until ended in accordance with the Act.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: March 28, 2022

Residential Tenancy Branch