



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Real Property Management
Executives and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR**

Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 46(1) and 62 of the Act.

The hearing was conducted via teleconference. The Tenants attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. 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 Tenants and I were the only ones who had called into this teleconference. The Tenants were given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenants that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenants testified that they were not recording this dispute resolution hearing.

The Tenants found the Landlord's 10 Day Notice on January 15, 2022 which had been pushed into a crevice on the front door of the rental unit. I find this 10 Day Notice was served on the Tenants according to Section 88(g) of the Act.

The Tenants confirmed that they personally attempted to serve the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on January 26, 2022 (the "NoDRP package"). The Tenants stated they only gave the Notice of Dispute Resolution Proceeding document to the Landlord. Later they personally served the remainder of the NoDRP package documents at the Landlord's office. I note that the

Landlord called into the RTB and asked an Information Officer if this hearing had been cancelled. The Information Officer told the Landlord the hearing was not cancelled. The Information Officer made a note that the Landlord wanted to advise he is not agreeable with cancelling the hearing. Despite this call, the Landlord did not attend the hearing. I find that the Landlord was sufficiently served with the NoDRP package for this hearing on January 26, 2022, in accordance with Sections 71(2) and 89(1)(a) of the Act.

Issues to be Decided

1. Are the Tenants entitled to cancellation of the 10 Day Notice?
2. If the Tenants are unsuccessful, is the Landlord entitled to an Order of Possession or a Monetary Order for unpaid rent?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenants testified that this tenancy began as a fixed term tenancy on October 15, 2021. The fixed term was to end on September 30, 2022. Monthly rent is \$2,300.00 payable on the first day of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$1,150.00 were collected at the start of the tenancy. The Tenants stated the Landlord still holds the security and pet damage deposits.

At the outset of the hearing, the Tenants stated the tenancy had ended and they moved out of the rental unit on February 1, 2022. They said they have not paid rent for the month of January, and the Landlord still holds their security deposit and their pet damage deposits.

In an email exchange with the Landlord, the Landlord wrote, “... *Until then we will be holding your deposit against your outstanding balance and will not issue a return unless instructed as per the RTB guidelines.*” Tenant LP stated “... *I gave you that address to forward the damage deposit to but I do not consent to legal documents going to my family home.*”

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenants' testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The Tenants testified that they no longer reside in the rental unit, so the Landlord does not require an Order of Possession. The Tenants confirmed, though, that they have not paid rent for the month of January 2022. I find that the Landlord's 10 Day Notice is upheld and that the Landlord is owed unpaid rent for January 2022.

Section 55(1.1) of the Act specifies when a 10 Day Notice (Section 46 of the Act) is served, as was in this matter, then an Order for unpaid rent must be made.

55 (1.1) *If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

An email exchange between the Tenants and the Landlord makes it clear that the Landlord is still holding the Tenants' security and pet damage deposits. I find that the total deposits held is \$2,300.00 which is the amount owing for January's rent. Considering the Tenants' evidence that they still owe January 2022's rent, and in the absence of evidence from the Landlord, pursuant to Sections 55(1.1) and 72(2)(b) of the Act, I Order that the Landlord is authorized to retain the security deposit and pet damage deposit held by the Landlord in satisfaction of the amount owing for unpaid rent from January 2022.

Conclusion

The Landlord's 10 Day Notice is upheld and the Landlord is authorized to retain the security and pet damage deposits to cover the outstanding unpaid rent in this matter.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: April 11, 2022

Residential Tenancy Branch