



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RANDALL NORTH REAL ESTATE SERVICES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes For the tenant: CNR, CNC-MT, LRE
For the landlord: OPR-DR, MNR-DR, FF

Introduction

This hearing was convened as the result of the cross applications for dispute resolution (application) of the parties seeking remedy under the Residential Tenancy Act (Act).

The tenants applied for:

- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord;
- an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord;
- an order extending the time to file an application disputing the 1 Month Notice issued by the landlord; and
- an order suspending or setting conditions on the landlord's right to enter the rental unit.

The landlord applied for:

- an order of possession of the rental unit pursuant to the 10 Day Notice served to the tenant;
- a monetary order for unpaid rent;
- recovery of the cost of the filing fee.

The landlord's agent (landlord) attended the hearing; neither tenant attended. The landlord said that they received the tenants' application.

The landlord submitted she served the tenants with their application by personal service on April 27, 2022. I find the landlord submitted sufficient evidence to prove the tenants were served with the landlord's application as required under the Act.

The hearing proceeded in the tenants' absence and continued for 17 minutes. The landlord was provided the opportunity to present their evidence and submissions orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary and Procedural Matter –

Despite having their own hearing scheduled for 11:00 am on July 14, 2022, the tenants failed to attend the hearing.

Rules 7.3 and 7.4 of the Rules of Procedure provides as follows:

7.3 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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Accordingly, in the absence of any evidence or submissions from the tenants at the hearing, I **order** their application dismissed, **without leave to reapply**.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on December 12, 2020, with a monthly rent of \$1,500. The tenants paid a security deposit and pet damage deposit of \$750, each. Filed in evidence was a copy of the written tenancy agreement.

The landlord submitted evidence that on April 8, 2022, she served the tenants with the 10 Day Notice, by personal delivery, listing a total unpaid rent of \$1,269 owed as of April 1, 2022. The effective vacancy date listed on the Notice was April 18, 2022. The Notice was filed into evidence by the landlord.

The landlord testified that the parties signed a Mutual Agreement to end the tenancy, effective on April 30, 2022. In their application, the tenants asserted that the parties signed a Mutual Agreement. Filed in evidence was a copy of the Mutual Agreement.

The landlord submitted that the tenants stayed in the rental unit beyond April 30, 2022; however, they did vacate by May 3 and 4, 2022. The landlord confirmed that they no longer needed an order of possession of the rental unit.

As to the claim for unpaid rent, the landlord said the tenant ledger sheet printed in April showed the tenants owed \$1,269, but the current tenant ledger sheet showed a zero balance.

The landlord stated she believed the tenants still owed the balance of \$1,269 as a rent deficiency for April 2022. The landlord called staff at their office during the hearing to confirm if the tenants paid the rent deficiency for April 2022, and/or to verify whether the tenants still owed the rent deficiency.

The staff during the hearing said their records currently showed a zero balance owed by the tenants, and were uncertain if that was due to their accounts being “zeroed” out due to the tenancy being over.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

As the tenancy is over, I dismiss the landlord's claim for an order of possession of the rental unit. The landlord confirmed they did not require an order of possession.

As to the landlord's remaining claim, I find the landlord submitted insufficient evidence to support their monetary claim. The landlord's evidence was inconsistent and unclear as to whether the tenants paid the April 2022 rent and whether there was an outstanding balance.

Due to the landlord's unclear and inconsistent evidence, I find they have not met their burden to prove their monetary claim on a balance of probabilities. As a result, I dismiss the landlord's monetary claim, with leave to reapply.

Conclusion

The tenant's application is dismissed without leave to reapply due to their failure to attend the hearing to present evidence in support of their own application and to respond to the landlord's application.

The landlord's claim for an order of possession is dismissed, without leave to reapply, as the tenancy ended on May 3, 2022.

The landlord's application for a monetary order for unpaid rent is dismissed, with leave to reapply, for the reasons noted above.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: July 14, 2022

Residential Tenancy Branch