



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants filed under the Residential Tenancy Act, (the “Act”)

The landlords have filed three separate application and are seeking the same orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenants’ application is seeking orders as follows:

1. To cancel a Two Month Notice to End Tenancy for landlord’s Use of Property (the “Notice”); and
2. To suspend or set condition on the landlord right to enter the rental unit.

Only the landlords’ appeared gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

Tenants’ Application

The tenants did not appear. The tenants filed an application to cancel the Notice. However, the tenants were never given a notice to end tenancy pursuant to section 49 of the Act. The tenants signed a mutual agreement to end the tenancy for June 1,

2022. Therefore, I dismiss this portion of the tenants' application without leave to reapply.

Further, the tenants seek an order to suspend or set condition on the landlords' right to enter the rental unit. The details the tenants provided in their application is as follows:

"I have concerns [name removed] will enter the home whenever she sees fit and start moving our belongings".

[Reproduced as written]

I find the tenants have not identified any breach of the Act by the landlord. The Act is not intended to issue orders simply because a tenant may have a concern. Therefore, I dismiss the tenants' application without leave to reapply.

Landlords' application

As the tenants did not appear; I have considered the service requirements of the Act.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the first Application for Dispute Resolution was filed on April 12, 2022 and Notice of Hearing were served by registered mail sent on April 23, 2022, Canada post tracking numbers were provided as evidence of service.

The landlords testified that the tenant AC signed for their package and the tenant CJ package was returned unclaimed.

I find the tenant AC was served on May 2, 2022, as shown in the Canada Post tracking history.

I find the tenant CJ was deemed served on April 28, 2022, pursuant to section 90 of the Act. Refusal or neglect to pickup the package does not override the deemed served provision of the Act.

Although the landlord has two subsequent applications. However, I find I do not need to consider service of these as they are same issue for subsequent unpaid rent. I find

there was no requirement under the Act to make separate application for subsequent unpaid rent.

Issue(s) to be Decided

Are the landlords entitled to an order of possession based on unpaid rent?

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on October 15, 2019. Rent in the amount of \$1,700.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenants.

The landlords testified that the tenants failed to pay rent for April 2022 and were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") issued on April 2, 2022, by email at 7:32pm to which the tenant acknowledged that it was received.

The landlords testified that the tenants did not pay April 2022, rent and have failed to pay subsequent rent for May, June and July 2022. The landlord seeks to recover unpaid rent in the amount of \$6,800.00 and an order of possession.

Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

I find that the tenants were served with the 10 Day Notice on April 2, 2022, by email. The tenants submitted a copy of the Notice in their own evidence on April 2, 2022, although that was not the issue to be heard and their application was not amended. I find the tenants were duly served with the Notice on April 2, 2022.

The 10 Day Notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

I find the tenants did not pay the outstanding rent for April 2022 within 5 days, nor was the 10 Day Notice disputed. I find the tenancy legally ended on April 15, 2022, the

effective date in the 10 Day Notice. I further find the tenants have failed to pay subsequent rent for May, June and July 2022.

While the tenants copy of the 10 Day Notice appears not to be signed by the landlord as it was a digital copy sent to them by email. However, I am satisfied that the tenants knew it was from the landlord as the landlord's name is printed upon it, and the tenants filed this in evidence. Therefore, I find it reasonable and appropriate to amend the Notice to accept the landlord's printed name as their signature, pursuant to section 68 and 62 of the Act.

I find the Notice is valid and remains in full force and effect.

I find that the landlords are is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlords are entitled to a monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act, comprise of unpaid rent for April, May, June and July 2022 , and the cost of the filing fee in the total amount of **\$6,900.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I have not granted the landlord the additional filing fees they paid for on their subsequent applications as they were unnecessary applications to make.

Conclusion

The tenants failed to pay rent as required by section 26 of the Act. The landlords are granted an order of possession and a monetary order for the unpaid rent and the cost to the filing fee.

The tenants' application is dismissed without leave to reapply.

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: July 14, 2022

Residential Tenancy Branch