



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

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

The landlord’s application is seeking 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 tenant’s application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on and
1. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary issues

Landlord’s application

The landlord’s application was filed under the Direct Request Process. On June 13, 2022, the landlord’s application was granted, and the landlord was granted a monetary order for unpaid rent and an order of possession.

On June 15, 2022, the tenants filed an application for review consideration which was granted on the basis that the Residential Tenancy Branch had made an administrative error. At this hearing, I can confirm, vary or set aside the original decision and orders.

At the outset of the hearing the tenants stated they will be moving out of the rental unit on July 18, 2022. The landlord was satisfied with an order of possession effective at 1:00PM on July 18, 2022. Therefore, the original order of possession is cancelled and replaced with new Order of Possession.

Therefore, I find the only issue left for me to consider in their respective applications is whether or not there is unpaid rent owed as I must consider this pursuant to section 55(1.1) and 67 of the Act.

I have amended the style of cause to include the tenants' names as they appear in the tenancy agreement. I do not find this prejudicial to either party as this is to capture any alias the tenants used when they entered into this tenancy agreement.

I have also removed the landlord's agents name from the style of cause. The landlord's agent is not listed in the tenancy agreement or even on the Notice. The landlord as name in the tenancy agreement and in the landlord's application will remain.

The landlord's agent testified that the tenants were served with their application and evidence, sent by registered mail on May 16, 2022. Canada post tracking numbers were provided as evidence. The Canada Post history shows the tenants did not pickup the packages. Refusal or neglect to pickup the packages does not override the deems services provision of the Act. I find the tenants were deemed served on May 21, 2022.

The landlord's agent testified that the tenants were also provided a copy by email. Filed in evidence is a copy of that email, showing the tenants email address.

The tenant AS stated that they did not get the registered mail or the email. AS stated that they are aware of the landlord's claim.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on March 1, 2018. Rent in the amount of \$6,000.00 was payable on the first of each month. Rent was later reduced to \$5,950.00. A security deposit of \$3,000.00 was paid by the tenants.

The landlord's agent testified that the tenants have always had a history with the rent being late, made in multiple pays by etransfer or not at all. The agent stated that they are not seeking to recover any unpaid rent that incurred before December 2021.

The landlord's agent testified that at the time they issued the Notice on April 21, 2022, the tenants were in rent arrears as follows: December 2021 the tenants only paid the amount of \$250.00 towards the rent, leaving a balance of \$5,750.00, and no rent for January, February, March and April 2022 leaving a total due of \$29,750.00 as shown in the Notice. The landlord's agent testified that the tenant's have failed to pay any of the rent listed in the Notice and have further failed to pay subsequent rent for May, June and July 2022.

The landlord's agent testified that cheques they received for December 2021, rent was returned due to insufficient funds.

The tenant testified that they were at a previous hearing on April 19, 2022, that was related to a notice to end tenancy for unpaid rent issued on January 15, 2022, and this matter has already been heard as the Arbitrator said that the landlord cannot claim for past rent. The parties provided the file number of this prior hearing for my consideration. I have noted the file number on the covering page of this Decision.

The tenant AS testified that their rent has always been paid on time. AS testified that the cheque they issued in December 2021, was on hold by their bank and they are unsure why it was not paid. AS testified that their bank says rent has been paid and so does the National Football League (the "NFL"). DS stated they were waiting for documents from the NFL to prove the payments of rent.

The tenant DS testified that they have always paid their rent in cash and the landlord does not give them a receipt or any invoice.

The tenant SS testified to clarify the matter that it was only in December 2021, that they started to make cash only payments because the landlord was not happy with receiving

multiple payments by etransfer as there was a daily limit on their account. SS stated that they made cash payments every month directly to the landlord.

The landlord's agent argued that this is simply not true.

Analysis

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

In this case, the parties were at a prior hearing on April 19, 2022, relating to a notice to end tenancy for unpaid issued on January 15, 2022. This was for accumulated unpaid rent from April 1, 2021, up to and including January 1, 2022, for a total amount owed of \$30,645.00.

As the landlord's application was dismissed without leave to reapply due to a service issue, I find the landlord is not entitled to claimed unpaid rent for December 2021, and January 2022. However, the landlord was entitled to claim for unpaid rent for February, March and April 2022 as listed in the Notice as these were due at the time the Notice was issued.

The evidence of the landlord was that the tenant has not paid any rent since December 2021. The evidence of the tenant was that they have proof from the NFL and their bank that rent was paid. The evidence of the tenant changed that rent since December 2021 has been paid in full and in cash only.

On April 21, 2022, the landlord issued the Notice which related to unpaid rent for December 2021, January 2022 and unpaid rent up to and including April 2022.

In this case, I do not accept the evidence of the tenants. I find their testimony conflicting and does not have the "ring of truth" that they have proof from the NFL and their bank that rent was paid. The evidence of the landlord was rent was never paid by a third party.

The tenants later changed their testimony that they started to pay their rent by cash only in December 2021 in one lump payment to the landlord because the landlord did not like to receive multiple payments by etransfer and have continued to pay rent in one lump payment for each subsequent month including July 2022. However, this cannot be true

because the evidence supports that the tenants issued two cheques on December 13, 2021 to the landlord. In the memo section of the cheque, one is for November 2021 rent and the other is for December 2021 rent. Both of these cheques were returned as nonnegotiable as this is supported by the landlord's bank statement.

Further, I find it highly unlikely that the tenants would continue to make such cash payments for rent when the landlord has been claiming that rent was not paid. The tenants had the ability to send e-transfers, they could have had their daily limit increased, issued cheques or even video recorded the exchange of cash, if any of this was true. The landlord cannot record something that was not received.

The tenants' provided no documentary evidence to support their testimony, no bank account statements were provided to prove they had the money and that the full amount was withdrawn from their account to pay the rent in cash. The tenants did not provide the actual dates they attended to the landlord's property.

I am satisfied that the tenants have failed to pay rent from December 2021 to July 2022. However, as December and January 2022 rent were dismissed at the prior hearing, I find the landlord is entitled to recover unpaid rent pursuant to section 55(1.1) and 67 of the Act from February 2022 to July 2022. As this amount equals the amount of \$35,700.00 which is outside my statutory authority, I grant the landlord a monetary order in amount of **\$35,000.00**.

As the tenancy has legally ended, I find it appropriate to offset the security deposit. I order that the landlord to retain the security deposit of **\$3,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$32,000.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Based on this Order, I find the original monetary order is cancelled and replaced with this Monetary Order.

Conclusion

The tenants' application to cancel the Notice is dismissed. The landlord is granted an Order of Possession and a Monetary Order for the unpaid rent.

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 18, 2022

Residential Tenancy Branch