



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, MNDCT, PSF

Introduction

This hearing was convened as a result of the Tenants' application under the Residential Tenancy Act (the "Act") for:

- disputing two 10 Day Notice to End Tenancy for Unpaid Rent dated April 3, 2022 (collectively, the "10 Day Notices") pursuant to section 46;
- an order that the Landlords comply with the Act, the regulations, or tenancy agreement pursuant to section 62;
- a Monetary Order of \$1,100.00 for the Tenants' monetary loss or money owed by the Landlords pursuant to section 67; and
- an order that the Landlords provide services or facilities required by law pursuant to section 65.

One of the Landlords FF, the Landlords' agent TL, and one of the Tenants CW attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, and to make submissions. The Tenants were assisted by their friend TK during the hearing.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise any issues with respect to service of dispute resolution documents.

Preliminary Matter – Addition of Parties

The parties named on this application were originally FF and CW only. A copy of the tenancy agreement submitted into evidence and the 10 Day Notices indicate that there is a second landlord, GF, and a second tenant, BW. The parties confirmed that GF is FF's spouse and BW is CW's adult son.

Rule 7.13 of the Rules of Procedure states an arbitrator may determine that another person should be added as a party. The newly added party will be added to the proceedings without the need for further revision of the Application for Dispute Resolution.

Based on the evidence presented and as discussed during the hearing, I have added GF and BW as parties to this application.

Preliminary Matter – Correction of Dispute Address

Following confirmation with the parties during the hearing, I have amended the dispute address to reflect the correct dispute city.

Preliminary Matter – Severing of Unrelated Claims

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply. (emphasis added)

At the outset of the hearing, I informed the parties that the most important claim in this application is the Tenants' claim to dispute the 10 Day Notices. I find that the Tenants' other claims to be unrelated to the Tenants' claim to cancel the 10 Day Notices.

As discussed during the hearing, I dismiss all of the Tenants' claims other than the claim to dispute the 10 Day Notices with leave to re-apply.

Preliminary Matter – Tenancy Has Ended

During the hearing, CW testified the Tenants left the rental unit in June 2022. TK submitted the Tenants had to leave because the Tenants were sick from the conditions in the rental unit.

FF testified the Tenants never gave formal notice to vacate the rental unit. FF stated that CW texted her saying she will return the keys on July 1, 2022, but did not do so.

FF testified that her son-in-law and daughter went to check on the rental unit and found the back sliding patio door unsecure. FF testified that the rental unit looked as if most of the Tenants' belongings had been taken. FF testified that as a result, they changed the locks and secured the patio doors. FF testified she later met CW at the rental unit for the Tenants to remove some more belongings.

Based on the foregoing, I find that the Tenants have vacated the rental unit and that this tenancy ended on July 3, 2022 when the Landlords changed the locks.

I find that as the tenancy has ended pursuant to section 44(1)(d) of the Act, it is not necessary to consider an Order of Possession for the Landlords under section 55(1).

Issue to be Decided

Are the Landlords entitled to a Monetary Order for unpaid rent under the 10 Day Notices?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced on August 1, 2020 and is month-to-month. Rent is \$2,200.00 due on the first day of each month. The Tenants paid a security deposit of \$1,100.00 which is held by the Landlords. A copy of the tenancy agreement has been submitted into evidence.

TL testified the Tenants did not pay rent in full for March 2022 and informed him that they would not be paying rent for April 2022 due to a rodent problem in the rental unit.

TL testified he informed CW that he will be serving the two 10 Day Notices for non-payment of rent. TL testified on April 3, 2022, he handed the 10 Day Notices to BW at the rental unit.

Copies of the 10 Day Notices have been submitted into evidence. The 10 Day Notices are dated April 3, 2022 and have an effective date of April 13, 2022. One of the 10 Day Notices states that the Tenants did not pay rent of \$840.00 due on March 1, 2022. The other states that the Tenants did not pay rent of \$2,100.00 due on April 1, 2022.

TL confirmed the Tenants have not paid any rent for the months of April, May, June, and July 2022. The Landlord submitted copies of text message correspondence between the parties. The Landlord's evidence indicates that the Tenants have previously paid rent late.

In response, TK submitted on behalf of the Tenants that there were problems with the rental unit from the very beginning, including furniture left by the previous tenants, a lack of heaters, and mouldy carpets that needed replacing. TK submitted that the Landlords promised repairs when rent was due, but nothing was ever done.

TK submitted that there were other problems such as flooding and rodents in the rental unit which caused damage to the Tenants' personal property. TK submitted that there were also issues with the hot water tank and garage door.

TK submitted that the Tenants stopped paying rent because none of the repairs were done and that it was a "nightmare". TK referred to photographs of the rental unit submitted by the Tenants.

CW confirmed that there were many issues with the rental unit and the Tenants received only empty promises from the Landlords. CW stated that there were rodent problems in the rental unit from the very beginning. CW testified that the Tenants had to spend their own money for heaters and replacing carpets. CW testified that the Landlords had no intention to replace the garage door. CW testified that the ceiling was starting to crack by the time the Tenants left the rental unit.

CW testified that her son BW has a mental illness and has been stressed because of the situation with the Landlords. CW and TK argued that TL should not have given the 10 Day Notices to BW due to BW's disability.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due, 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.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that a 10 day notice to end tenancy must comply with section 52 of the Act, which states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
 - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the 10 Day Notices and find that they comply with the requirements of section 52 in form and content. I note one of the 10 Day Notices state that rent of \$2,100.00 rather than \$2,200.00 was due on April 1, 2022. I find that this was likely a typographical error on the notice. As it is undisputed that the Tenants did not pay rent in April 2022, I find it is reasonable to correct this amount to \$2,200.00 pursuant to section 68 of the Act.

Based on the parties' testimonies, I find the Tenants were served in person with copies of the 10 Day Notices on April 3, 2022 in accordance with section 88 of the Act. I note that CW disputed whether BW should have been served with the 10 Day Notices.

However, I do not find the Tenants to have provided sufficient evidence to demonstrate that BW's disability or mental health condition renders him legally incompetent to accept service of dispute resolution documents. In any event, the Tenants have applied to dispute the 10 Day Notices, so I am satisfied that service has been sufficiently effected.

Section 46(4)(b) of the Act permits a tenant to dispute a 10 day notice to end tenancy for non-payment within 5 days of receiving such notice. Therefore, the Tenants had until April 8, 2022 to dispute the 10 Day Notices. Records indicate that CW submitted this application on April 5, 2022. I find this application was made within the 5-day dispute deadline stipulated under section 46(4)(b) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

In this case, it is not disputed that the Tenants have not paid rent to the Landlords.

As stated above, section 26(1) of the Act requires that a tenant must pay rent 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.

The legal reasons under the Act for a tenant to deduct from rent include:

- The tenant paid too much for a security or pet damage deposit (section 19(2))
- The tenant paid for emergency repairs (section 33(7))
- The tenant paid an illegal rent increase (section 43(5))
- The tenant applied compensation to the last month's rent where the landlord has issued a notice to end tenancy for landlord's use (section 51(1.1))
- The tenant was awarded monetary compensation or a rent reduction by the Residential Tenancy Branch (section 72(2)(a))

Based on a review of the evidence before me, I do not find the Tenants to have established a right to deduct or withhold payment of rent.

I do not find the Tenants to have overpaid a security or pet damage deposit or paid an illegal rent increase to the Landlords. I do not find the Tenants to be entitled to compensation for a notice to end tenancy for landlord's use or as a result of any orders of the Residential Tenancy Branch.

Furthermore, I do not find the Tenants to take the position that they have withheld rent on account of any specific emergency repair expenses that they incurred and which qualify for reimbursement under section 33 of the Act. The Tenants have not paid rent at all to the Landlords for several months. I do not find the Tenants to have explained how they might have incurred emergency repair expenses which equal to or exceed the amount of rent that was payable to the Landlords.

Indeed, I find the Tenants' position is that they stopped paying rent altogether in March 2022 because the Tenants felt there were problems with the rental unit which were not being addressed by the Landlords. I find that this is not a valid reason for withholding rent under the Act. I find the Tenants are not entitled to withhold rent in the circumstances without first obtaining an order from the Residential Tenancy Branch.

I note that it is possible for a tenant to be entitled to monetary compensation from a landlord without having a legal right under the Act to deduct or withhold rent. In those situations, the tenant should continue to pay rent to the landlord and make an application for dispute resolution. I note the Tenants may have other claims which are not dealt with in this application, including the Tenants' monetary claim which has been severed. I make no findings as to the merits of those claims.

I conclude that the Tenants owe rent to the Landlords as stated in the 10 Day Notices and that the Tenants did not establish a legal right under the Act to withhold payment of rent. Accordingly, I dismiss the Tenants' claim to dispute the 10 Day Notices.

Pursuant to section 55(1.1) of the Act, the director must grant an order requiring the payment of unpaid rent when the notice to end tenancy complies with section 52 of the Act and the tenant's application to dispute the notice is dismissed. Therefore, I find that the Landlords are entitled to an order for unpaid rent.

Residential Tenancy Policy Guideline 3. Claims for Rent and Damages for Loss of Rent states as follows:

If the tenant has vacated or abandoned the rental unit prior to the date of the dispute resolution hearing, the date the tenancy ended is the date that the tenant vacated or abandoned the rental unit. Only rent owing up until this date would constitute unpaid rent for the purpose of section 55(1.1) of the RTA [...]

In this case, I have found the Tenants vacated the rental unit prior to the date of the hearing and that the tenancy ended on July 3, 2022.

I find the total amount of rent owing by the Tenants up to July 3, 2022 to be as follows:

Item	Amount
Balance of March 2022 Rent	\$840.00
April 2022 Rent	\$2,200.00
May 2022 Rent	\$2,200.00
June 2022 Rent	\$2,200.00
July 2022 Rent Pro-rated to July 3, 2022 (\$2,200.00 x 3 / 31 days)	\$212.90
Total Amount Owing	\$7,652.90

Pursuant to section 55(1.1) of the Act, I order that the Tenants pay to the Landlords the sum of \$7,652.90 for unpaid rent.

Pursuant to section 72(2) of the Act, I authorize the Landlords to retain the Tenants' \$1,100.00 security deposit in partial satisfaction of the above monetary award.

The Monetary Order granted to the Landlords on this application is calculated as follows:

Item	Amount
Amount Owing for Unpaid Rent	\$7,652.90
Less Security Deposit	- \$1,100.00
Monetary Order for Landlords	\$6,552.90

Conclusion

The Tenants' claim to dispute the 10 Day Notices is dismissed without leave to re-apply.

The Tenants' remaining claims on this application are severed and dismissed with leave to re-apply. Leave to re-apply does not extend any applicable limitation periods.

Pursuant to section 72(2) of the Act, the Landlords are authorized to retain the Tenants' security deposit in partial satisfaction of the amount awarded on this application.

Pursuant to section 55(1.1) of the Act, I grant the Landlords a Monetary Order in the amount of **\$6,552.90**. The Tenants must be served with this Order as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 25, 2022

Residential Tenancy Branch