



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on May 6, 2022, and to recover the cost of the filing fee.

Both parties appeared.

Preliminary and Procedural Issues

In this matter the landlord has filed evidence. However, that evidence is not relevant to the issue before me as it relates to damage of the rental unit. The landlord cannot make a claim against the tenants unless they have filed formal Application for Dispute Resolution. Therefore, I will not consider any evidence or testimony that is not relevant to the issue before me.

Issue

Should the Notice be cancelled?

Background and Evidence

The parties agreed that the tenants vacated the rental unit on May 21, 2022.

The tenant stated that they disputed the Notice because they were entitled to withhold rent for May 2022, as that was their last month of the tenancy and that was their compensation for receive a Two Month Notice to End Tenancy for Landlord’s Use of

Property. Filed in evidence is a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenant stated because the Notice had an effective date of May 20, 2022, that was earlier than the date in the Two Month Notice to End Tenancy for Landlord's Use of Property May 31, 2022. The tenant stated that they had no other option but to dispute the Notice because they were preparing to vacate in accordance with the Act.

The landlord stated that they were not aware of the compensation requirements when they issued the Two Month Notice to End Tenancy for Landlord's Use of Property and they informed the tenants that they are cancelling it.

Analysis

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

Under the Residential Tenancy Policy Guideline (PG) 11 C. A landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. I find the landlord was not entitled to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property without the consent of the tenants.

In this case, the tenants were served a Two Month Notice to End Tenancy for Landlord's Use of Property, with an effective date of May 31, 2022. Under the Act the tenants are entitled to receive from the landlord compensation that is the equivalent to one month's rent. Under PG 50 the tenants were entitled to withhold that compensation from their last month of rent, which was May 2022.

I find the tenants were exercising their rights under the Act, by withholding rent for May 2022. I find the Notice issued for unpaid rent for May 2022 is not valid as the tenants had the authority under the Act to withhold rent. Therefore, I grant the tenants application to cancel the Notice and that the tenancy legally ended under section 49 of the Act.

As the tenants had no option but to dispute the Notice, I find the tenants are entitled to recover the cost of the filing fee of \$100.00 from the landlord. I grant the tenants a monetary order, pursuant to section 67 and 72 of the Act. This order may be filed in the

Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the landlord

Conclusion

The tenant's application to cancel the Notice is granted. The tenants are granted a monetary order to recover the cost of the filing fee from the landlord. The tenancy has legally ended pursuant to section 49 of the Act.

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: September 20, 2022

Residential Tenancy Branch