



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, MNDCT, DRI-ARI-C, MNRT, RR, OLC, RP, FFT**

Introduction

This hearing dealt with an application by the tenants for orders under the Residential Tenancy Act ("Act") as follows:

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 46;
- compensation for monetary loss or other money owed
- to dispute an Additional Rent Increase for Capital Expenditures
- for the cost of emergency repairs made during the tenancy
- reduce rent for repairs, services or facilities agreed upon but not provided
- requiring the landlord to comply with the Act, regulation and/or the tenancy agreement
- reimbursement of the filing fee

Both parties attended the hearing with the landlords being represented by landlord AO, and FN, while the tenants were represented by tenant JL.

All parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. All parties were affirmed.

JL confirmed receipt of the 10 Day Notice dated May 3, 2022. Pursuant to section 88 of the Act the tenants are found to have been served with the 10 Day Notice in accordance with the Act. The landlords confirmed they received the tenants' dispute notice, however the landlords disputed receipt of the tenants' materials filed in support of the hearing. The tenant did not provide clear evidence as to how and when they served their supporting materials. Therefore, I find that service of the supporting materials did not comply with the Act, however the tenants' supporting materials were not relevant to the issues in the hearing.

At the outset of the hearing, the parties were advised and agreed that the only issues I would hear would be the issue of whether the 10 Day Notice is valid and enforceable and whether the tenants are entitled to recover the filing fee. All other issues were severed from the hearing with leave to reapply.

Both parties had an equal opportunity to present evidence and make submissions, however in my decision I will only focus on the evidence and submissions that are relevant to the issues in the hearing.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenants?
2. Are the tenants entitled to reimbursement of the filing fee?

Background and Evidence

The tenancy commenced on November 1, 2019, for a fixed date. FN submitted that the tenancy end date was in error and the tenancy was intended to be for a one year term ending on November 1, 2020. JL submitted that the tenancy was to have been for a longer term, however, did not provide any supporting evidence of a longer fixed term agreement. Rent was \$5500.00 per month due on the first day of the month. A security deposit of \$2750.00 and a pet deposit of \$2000.00 are still held in trust by the landlords. JL and the other tenants were removed from the residence in July 2022. AO and FN confirmed that the rental unit is currently vacant. The tenants wish to return to the residence.

AO and FN stated that the tenants were sub-lessees of FN, who was in fact a tenant of AO. The tenant disputed this and referred to a previous RTB decision whereby an arbitrator made a determination that they were tenants of AO and not sub-tenants of FN. Both the landlords and tenant referred to several previous RTB decisions in relation to these landlords and tenants and the rental unit.

RTB History

There have been several previous RTB decisions regarding AO, FN, and JL related to this rental unit. However, only two prior decisions are relevant to this matter. On November 5, 2021, an arbitrator determined in a hearing that the tenants were not sub-

tenants of FN but in fact were direct tenants of AO. On June 30, 2022, another arbitrator issued an order of possession in favour of landlord AO against tenant FN for the subject property as they found that there was a tenancy agreement between AO and FN for the subject property.

Evidence of Non Payment of Rent

The 10 Day Notice states that $(9 \times 5500) + 500 = (\$50000.00)$ is outstanding. AO confirmed he had not received rent from the tenants from July 2021 onward and that was the basis upon which the 10 Day Notice was served.

FN stated in the hearing that the tenants were paying the \$5500.00 per month directly to her on a monthly basis. In July 2021, the tenants stopped paying rent. A partial rent payment was made in July 2021 and then no rent was paid by the tenants for any month following July.

JL confirmed that he had not paid rent since September 2021 and that the amounts paid for the security deposit and pet deposit were accurate. I outlined in the hearing for JL the six ways that tenants can withhold rent under the Act. In response to my questions JL stated that he did not receive a notice from the landlords under section 49 of the Act. He agreed there was no order from an arbitrator allowing the tenants to forego rent payments. He stated he did not have the consent of the landlords to not pay rent. He advised that he had made emergency repairs and was unable to provide information about the total cost of the repairs but did agree that the cost was not over \$5000.00. He stated that FN stopped paying for utilities and internet, but was vague about when that occurred, and did not provide concrete evidence of that.

The tenant did not pay rent after the 10 Day Notice with an effective date of May 14, 2022 was issued.

Analysis

Although there was disagreement about the length of the fixed term tenancy, I find that the length of tenancy isn't relevant to my determination of whether the 10 Day Notice was valid. All parties were in agreement that there was a tenancy.

All parties were in agreement that the tenants do not have possession of the rental unit. Possession is with the landlord AO. The issue before me is whether the 10 Day Notice should be cancelled, and possession of the rental unit returned to the tenants.

I decline to order that possession of the unit be returned to the tenants for two reasons.

First, there was a previous determination made that FN was the main tenant, and had a tenancy agreement with AO. JL was a sub tenant of FN. There was a valid and enforceable notice against the tenant FN to vacate and therefore the landlord was granted an order of possession against her and all occupants. The tenants under this order were occupants and AO was entitled to remove them pursuant to this order of possession. I acknowledge that this reasoning is based on the finding of a previous arbitrator that AO was the landlord, the tenant was FN, and the existence of a sub-lease was irrelevant to the decision.

Second, accepting that AO is the tenants' landlord as argued by the tenant, the 10 Day Notice issued by landlord AO to the tenants is valid. It meets the requirements of section 52 of the Act, and the tenants agreed they did not pay rent since September 2021.

There are only six reasons a tenant can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);
2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

I find that the tenant had no valid reason to withhold the amount of rent owing. While the tenant stated that rent was withheld for emergency repairs, which can be a valid reason to withhold rent under section 33 of the Act, the tenant was vague about the cost of the repairs, did not establish they were of an emergency nature, and the cost of the repairs did not exceed \$5000.00. Even accepting the Tenant was permitted to withhold rent pursuant to section 33 of the Act, and that the amount was \$5,000.00, this did not entitle the Tenant to withhold the remaining \$44500.00 under the Act. Therefore, even if I accept that the tenant paid some amount for emergency repairs this does not invalidate the 10 Day Notice which was for a higher amount.

I would address what date the T received the Notice, that T had 5 days to pay or dispute, that T did not pay, that T disputed in time but has not provided a valid basis for the dispute. Up to you whether you want to include this, but make sure all this is a non-issue if you are not going to write it out.

I therefore find that the 10 Day Notice is valid and enforceable. Even if the tenancy had not ended pursuant to the previous order of possession and writ of possession against FN, I find that the tenancy would have ended on the date of this decision pursuant to the valid 10 Day Notice against the tenants. However, I decline to issue an order of possession in favour of the landlords as AO already has possession of the rental unit

The parties disagreed about how much rent was outstanding and I do not have sufficient evidence before me to determine this and therefore I decline to issue the landlord a monetary order under s. 55(1.1). The landlord can apply to recover any unpaid rent outstanding.

I also decline to issue a monetary order for unpaid rent pursuant to section 55(1.1) of the Act.

As the tenants were not successful in their application the filing fee won't be reimbursed.

Conclusion

The 10 Day Notice is valid and enforceable. An order of possession is not granted as the tenants no longer occupy the rental property. The filing fee will not be reimbursed.

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 29, 2022

Residential Tenancy Branch