



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

TT: CNR, MNDCT RR FFT

LL: OPR-DR MNR-DR MNRL MNDL FFL

Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). The Tenants made one application (Tenants’ Application”) for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 3, 2022 (the “10 Day Notice”) pursuant to section 46;
- an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 65;
- a monetary order for compensation pursuant to section 67; and
- authorization to recover the filing fee for the Tenants’ Application from the Landlord pursuant to section 72.

The Landlord made one application (“Landlord’s Application”) for:

- an order of possession for non-payment of rent pursuant to sections 46 and 55;
- a monetary order for unpaid rent pursuant to section 55.1;
- a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy pursuant to section 67; and
- authorization to recover the filing fee of the Landlord’s Application from the Tenants pursuant to section 72.

The original hearing of the Tenants’ Application and Landlord’s Application was held on June 23, 2022 (“Original Hearing”). The Landlord, two agents for the Landlord (“JC” and “PC”) and the two Tenants (“BG” and “LG”) attended the Original Hearing. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy*

Branch Rules of Procedure (“RoP”). The parties were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. As there was insufficient time for the parties to present their testimony and rebuttals, I adjourned the Original Hearing and issued a decision dated June 24, 2022 (“Interim Decision”). The Interim Decision stated the Landlord was permitted to serve copies of two amendments (“Amendments”) to the Landlord’s Application on the Tenants and the Tenants were permitted to serve any evidence they considered relevant to respond to the claims made by the Landlord in the Amendments. The Interim Decision, and Notices of Dispute Resolution Proceeding for the adjourned hearing, scheduled for August 8, 2022 at 1:30 pm (“Adjourned Hearing”), were served on the parties by the Residential Tenancy Branch (“RTB”). The Landlord, JC, PC and BG attended the Adjourned Hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the Original Hearing, BG stated the Tenants served the Notice of Dispute Resolution Proceeding and their evidence (collectively the “Tenants’ NDRP Package”) on the Landlord. PC acknowledged the Landlord received the Tenants’ NDRP Package. I find the Tenants’ NDRP Package was served on the Landlord in accordance with sections 88 and 89 of the Act.

At the Original Hearing, PC stated she served the Notice of Dispute Resolution Proceeding and her evidence (collectively the “Landlord’s NDRP Package”) on each of the Tenants. BG acknowledged the Tenants received Landlord’s NDRP Package. I find the Landlord’s NDRP Package was served on each of the Tenants in accordance with sections 88 and 89 of the Act.

At the Adjourned Hearing, PC stated the Landlords served the Amendments on the Tenants by email pursuant to an Order for Substituted Service issued by an adjudicator of the RTB dated June 7, 2022. I find the Amendments were served in accordance with the provisions of section 89 of the Act.

Preliminary Matter – Severance and Dismissal of Tenants’ Claims

In addition to seeking cancellation of the 10 Day Notice, the Tenants made claims for (i) an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord and; (ii) a monetary order for compensation from the Landlord. At the Original Hearing, the Tenants acknowledged they vacated the rental unit in mid-May, 2022.

Rule 2.3 of the RoP states:

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.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

As the Tenants have vacated the rental unit and as a result the tenancy has ended, I dismiss the Tenants' claim for an order for reduced rent as the claim is now moot. I dismiss the Tenants' claim for a monetary order for compensation from the Landlord with leave to reapply. The Tenants have the option of making a new application for dispute resolution to seek compensation from the Landlord for loss repairs, services and facilities agreed upon but not provided by the Landlord.

Preliminary Matter – Severance and Dismissal of Landlord's Claim

In addition to seeking an Order of Possession and a monetary order for unpaid rent, the Landlord claimed for a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy. As this claim is not sufficiently related to the Landlord's claim for an Order of Possession and unpaid rent, pursuant to Rule 2.3 of the RoP, I sever the Landlord's claim for a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy and dismiss the claim with leave to reapply. The Landlord has the option of making a new application for dispute resolution to seek a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy.

Issues to be Decided

- Are the Tenants entitled to cancellation of the 10 Day Notice?
- Are the Tenants entitled to recover the filing fee for the Tenants' Application?
- If the Tenants are not entitled to cancellation of the 10 Day Notice, is the Landlord entitled to an Order of Possession?

- Is the Landlord entitled to recover unpaid rent?
- Is the Landlord entitled to recover the filing fee for the Landlord's Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenants' Application and the Landlord's Application and my findings are set out below.

The Landlord submitted into evidence a copy of the tenancy agreement ("Tenancy Agreement") and addendum ("Addendum") dated November 15, 2021 between the Landlord and the Tenants. The parties agreed the tenancy commenced on January 3, 2022, for a fixed term ending December 31, 2023, with rent of \$8,000.00 payable on the 1st day of each month. The Tenants were to pay a security deposit of \$4,000.00 by November 17, 2021. PC acknowledged the Tenants paid the deposit and that the Landlord was holding it in trust for the Tenants.

PC stated the Landlord the 10 Day Notice was served on the Tenants' door on March 3, 2022. PC submitted into evidence a copy of a signed and witnessed Proof of Service on Form RTB-34 to corroborate her testimony. I find the Tenants were served with the 10 Day Notice in accordance with the provisions of section 88 of the Act.

The 10 Day Notice stated the Tenants had rental arrears of \$8,000.00 for unpaid rent as of March 1, 2022. The Tenants acknowledged they vacated the rental unit in mid-May 2022. PC the Landlord did not discover the Tenants had abandoned the rental unit until May 17, 2022 when the Landlord took back possession of the rental unit. PC stated the Landlord was seeking rental arrears totalling \$32,000.00 for unpaid rent from March to July inclusive, calculated as follows:

Date	Rent Owed	Paid	Balance
01-Mar-22	\$8,000.00	\$0.00	\$8,000.00
01-Apr-22	\$8,000.00	\$0.00	\$8,000.00
01-May-22	\$8,000.00	\$0.00	\$8,000.00
Total	\$24,000.00	\$0.00	\$24,000.00

PC testified paragraph 1 of the Addendum stated:

- 1. LIQUIDATED DAMAGES.** If the Tenant ends the fixed term tenancy before the end of the original term as set out in the Residential Tenancy Agreement, the sum of one month's rent shall be paid by the Tenant to the Landlord as liquidated damages and not as a penalty to cover the administration costs of re-renting the rental unit. The Landlord and Tenant acknowledge and agree that the payment of the said liquidated damages shall not preclude the Landlord from exercising any further right of pursuing another remedy available in law or in equity, including but not limited to, damages to the rental unit and the residential property and damages as a result of loss of rental income due to The Tenant's breach of the terms of this Agreement.

PC stated the Landlord was seeking an additional \$8,000.00 for rental arrears pursuant to paragraph 1 of the Addendum.

The Tenants did not provide any evidence they had paid they had paid all or any portion of the rent owing for the months of March through June 2022.

Analysis

Sections 46(1) through 46(4) of the Act state:

- 46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than *10 days after the date the tenant receives the notice*.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.

PC stated the Landlord a Tenant Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated March 3, 2022 ("10 Day Notice") was served on the Tenants' door on

March 3, 2022. The Tenants are deemed to have received the 10 Day Notice on March 6, 2022, being three days after it was posted on the Tenants' door. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or March 11, 2022, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB disclose the Tenants made their application on March 7, 2022. Accordingly, the Tenants made their application within the five-day dispute period.

PC stated the Tenants did not give the Landlord any written notice that they were vacating the rental unit and claimed the Tenants abandoned the rental unit. PC stated the Landlord took back possession of the rental unit on May 17, 2022. The Tenants admitted they vacated the rental unit in mid-May 2022. The Tenants did not submit any evidence to show they had given the Landlord written notice they were vacating the rental unit. As such, I find on a balance of probabilities, that the Tenants abandoned the rental unit. Section 44(1)(d) of the Act states:

- 44(1) A tenancy ends only if one or more of the following applies:
[...]
(d) the tenant vacates or abandons the rental unit;
[...]

Pursuant to section 44(1) of the Act, I find the tenancy ended on May 17, 2022, being the date the Landlord took back possession of the rental unit.

Section 26(1) of the Act states:

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Landlord has claimed \$8,000.00 for liquidated damages. Liquidated damages are not rent for the purposes of section 26(1) of the Act. As such, a landlord must specifically claim in their application for dispute resolution that they are seeking liquidated damages and how much they are seeking. Although the Landlord's Application included a claim for a monetary order for compensation to make repairs that the Tenants, their pets or their guests caused during the tenancy, the Landlord's Application did not include a claim for compensation for liquidated damages. As such, a claim for liquidated damages is

not properly before me and I make no finding on whether the Landlord is entitled to liquidated damages. The Landlord has the option of making a new application for dispute resolution to make a claim for liquidated damages.

I accept PC's testimony the Tenants had rental arrears of \$24,000.00 for the months of March through May, 2022 inclusive. As such, I find the Tenants are in rental arrears of \$24,000.00 for the months of March through May 2022 inclusive. As such, I find the 10 Day Notice was issued for a valid reason. Based on the foregoing, I find the Landlord has demonstrated, on a balance of probabilities, that there was cause to end this tenancy.

Sections 55(1) and 55(1.1) of the Act state:

- 55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.
- (1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I find the 10 Day Notice meets the form and content requirements of section 52 of the Act. As the Tenants have vacated the rental unit, I find it is unnecessary for me to grant the Landlord an Order of Possession pursuant to section 55(1) of the Act. As I have found the Tenants have rental arrears of \$24,000.00, I order the Tenants pay the Landlord for the rental arrears as specified above pursuant to section 55(1.1) of the Act. Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit of \$4,000.00 in partial satisfaction of the Monetary Order made above.

As the Landlord has been substantially successful in the Landlord's Application, pursuant to section 72(1), I order the Tenants pay for the filing fee of the Landlord's Application.

Conclusion

The Tenants' Application is dismissed without leave to reapply.

I order the Tenants pay the Landlord \$20,100.00 representing the following:

Description	Amount
Rental Arrears for March through May 2022 inclusive	\$24,000.00
Filing Fee for Landlord's Application	\$100.00
Less Tenant's Security Deposit	-\$4,000.00
Total	\$20,100.00

This Monetary Order must be served by the Landlord on the Tenants and may be enforced in Provincial 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: September 3, 2022

Residential Tenancy Branch