



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants July 11, 2022 (the "Application"). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 03, 2022 (the "Notice")
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement

The Landlord appeared at the hearing with their spouse. The Tenants did not appear at the hearing, which lasted 19 minutes. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Landlord and their spouse provided affirmed testimony.

The Tenants submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenants' evidence. The Landlord testified that they did not receive the hearing package or Tenants' evidence and only knew about the hearing from the RTB. The Landlord did want to proceed with the hearing because they sought an Order of Possession on the Notice.

I am not satisfied the Tenants served their evidence on the Landlord as required by rules 3.1 and 3.14 of the Rules. Pursuant to rule 3.17 of the Rules, I have not considered the Tenants' evidence, other than the Notice.

I proceeded with the hearing. The Landlord and their spouse were given an opportunity to present relevant evidence and make relevant submissions. I have considered all admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
3. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

The Notice was submitted by the Tenant. The Notice states that the Tenant failed to pay \$700.00 in rent due July 01, 2022.

The Landlord testified as follows.

There is a written tenancy agreement between the parties. The tenancy started November 01, 2021, and was for a fixed term. Rent is \$2,050.00 per month due on the first day of each month. The Tenants paid a \$975.00 security deposit and no pet damage deposit.

The Notice was put in the Tenants' mailbox July 03, 2022.

The Tenants failed to pay \$100.00 of rent for months between December and July and owed \$700.00 in rent when the Notice was issued. The Tenants paid the \$700.00 owing July 15, 2022. From August to December, the Tenants have failed to pay \$50.00 of rent each month for a total of \$250.00. The Tenants have never had authority under the *Residential Tenancy Act* (the "Act") to withhold rent.

The Landlord is seeking to recover the \$250.00 currently outstanding and is seeking to keep this from the security deposit.

The Landlord is seeking an Order of Possession effective at the end of December.

Analysis

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.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

- (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...
- (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.

Section 55 of the *Act* states:

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...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.

Rule 7.3 of the Rules states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Given the Tenants did not appear at the hearing, and there is no admissible evidence from the Tenants before me, the Application is dismissed without leave to re-apply.

I accept the undisputed testimony of the Landlord and I make the following findings based on it.

The Tenants are required to pay \$2,050.00 in rent per month by the first day of each month pursuant to the tenancy agreement.

From December to July, the Tenants failed to pay \$700.00 of rent owing. The Tenants did not have authority under the *Act* to withhold rent. Section 46(3) of the *Act* does not apply, and the Tenants were required to pay rent pursuant to section 26(1) of the *Act*.

Given the Tenants had failed to pay \$700.00 in rent as of July 03, 2022, the Landlord was entitled to serve the Tenants with the Notice pursuant to section 46(1) of the *Act*.

The Tenants were served with the Notice in accordance with section 88(f) of the *Act* on July 03, 2022. Pursuant to section 90(d) of the *Act*, the Tenants were deemed to have received the Notice July 06, 2022. I note that this information accords with the information provided by the Tenants on the Application.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenants had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

The Tenants did not pay the \$700.00 by July 11, 2022.

The Tenants disputed the Notice in time; however, the Tenants did not appear at the hearing to explain the basis for their dispute. Further, the Tenants' dispute of the Notice has been dismissed without leave to re-apply.

I have found the Notice complies with section 52 of the *Act*. I have dismissed the Tenants' dispute of the Notice and uphold the Notice. Therefore, pursuant to section 55(1) of the *Act*, I issue the Landlord an Order of Possession effective at 1:00 p.m. on December 31, 2022.

Pursuant to section 55(1.1) of the *Act*, the Landlord is awarded \$250.00 in unpaid rent currently outstanding. Pursuant to section 72(2) of the *Act*, the Landlord can keep this \$250.00 from the security deposit.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on December 31, 2022. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord can keep \$250.00 of the security deposit for 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 *Act*.

Dated: December 08, 2022

Residential Tenancy Branch