



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application filed on September 20, 2022, is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;; and
3. To recover the cost of filing the application.

The tenants' application filed on July 13, 2022, is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on July 8, 2022; and
2. To have the landlord comply with the Act.

Only the landlord's agent appeared. The tenants did not attend. Although I note both tenants were sent a reminder notification by email on December 5, 2022, of today's hearing.

At the outset of the hearing the landlord's agent stated the landlord was not served with the tenants' application and only discovered this when they submitted their own application. The landlord's agent stated they served each of the tenants by registered mail sent on October 7, 2022. The agent stated that the packages were returned unclaimed. Filed in evidence are copies of the Canada Post tracking numbers. I find the tenants were served in accordance with the Act. Further, it was unnecessary for the landlord to file their application, because when a tenant disputes the Notice, the landlord

is entitled to receive the same relief, an order of possession and a monetary order for unpaid rent under section 55 of the Act.

Issue(s) to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenants confirm in their Application for Dispute Resolution that they received the Notice on July 8, 2022. A copy of the Notice was submitted as evidence.

The tenants describe why they are disputing the notice as follows
:

I also do jobs for the landlord that he is refusing to pay me for in which is how my rent gets paid by at the end of every month. He has refused to pay me so I cannot pay my rent

The landlord's agent testified that the tenants current monthly rent is \$1,421.00 and the tenants were in rent arrears when they entered into a repayment plan with the landlord to pay an additional \$325.00 per month. Filed in evidence is a copy of the tenancy agreement and a copy of the repayment plan.

The landlord's agent testified that the tenants failed to pay any rent for June and July 2022 or the amount due under the repayment plan and the landlord issued the Notice and served the tenants, which they have acknowledged.

The landlord's agent testified that landlord never agreed to pay the tenant money for any jobs.

The landlord's agent testified that the tenants did not pay the outstanding rent within the Notice and has failed to pay rent for August, September, October, November and December 2022. The landlord seeks an order of possession and a monetary order for the unpaid rent.

Analysis

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

Based on the submission of the tenants I find that the tenants were served with the Notice for non-payment of rent on July 8, 2022, by posting to the door. The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenants had five days to dispute the Notice.

While I accept the tenants filed an application to dispute the Notice within 5 days; however, I find the tenants application is without merit. Rent was not paid, and the tenants provided no evidence that they had the authority under the Act to withhold any amount from the rent.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find the landlord is entitled to recover unpaid rent, pursuant to section 55 of the Act. The amount owed in the Notice was **\$4,737.60** this amount was for outstanding arrears, June and July 2022 rent. The tenants have further failed to pay subsequent rent of **\$7,105.00** for August, September, October, November and December 2022, I find the tenants have breached section 26 of the Act.

I find that the landlord has established a total monetary claim of **\$11,942.60** comprised of unpaid rent, and the \$100.00 fee paid by the landlords for this application.

I order that the landlord retain the security deposit of \$700.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$11,242.60**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord is granted an order of possession and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: December 08, 2022

Residential Tenancy Branch