



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE, FFT (Tenants)
OPR-DR, MNR-DR, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenants applied as follows (the “Tenants’ Application”):

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued in August 2022 (the “Notice”)
- To suspend or set conditions on the Landlord’s right to enter the rental unit
- To recover the filing fee

The Landlord applied as follows (the “Landlord’s Application”):

- For an Order of Possession based on the Notice
- To recover unpaid rent
- To recover the filing fee

Preliminary Issues

This matter came before me January 13, 2023, and was adjourned due to phone issues. An Interim Decision was issued January 13, 2023, and should be read with this Decision.

P.G. appeared at the second hearing for the Tenants. G.L. and T.L. appeared at the second hearing for the Landlord. I explained the hearing process to the parties. I told

the parties they are not allowed to record the hearing pursuant to the Rules. The parties provided affirmed testimony.

Neither party sought to call witnesses at the second hearing. P.G. testified that the Tenants have a witness; however, the witness was not able to appear at the second hearing due to illness.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told P.G. I would consider the dispute of the Notice and request for the filing fee and dismiss the request to suspend or set conditions on the Landlord's right to enter the rental unit because this request is not sufficiently related to the dispute of the Notice. The request to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the "Act").

The Tenants submitted an Amendment. P.G., the Tenants' agent, testified that the Amendment was sent to the Landlord two days before the hearing. G.L., the Landlord's agent, testified that they had not received the Amendment. I do not allow the Tenants' Application to be amended because the Tenants did not comply with rule 4.6 of the Rules in relation to the timing of service of the Amendment.

At the hearings, P.G. submitted that it is the Landlord who owes the Tenants money and not the other way around. The Tenants are seeking compensation in their Amendment; however, the Amendment is not being considered for the reason above. Further, pursuant to rule 2.3 of the Rules, I would not have considered a request for compensation along with applications about the Notice and unpaid rent, except when the compensation relates to one of the six reasons tenants can withhold rent, which I have considered below. At this point, the relevant and urgent matters are the validity of the Notice and unpaid rent. Whether the Tenants are entitled to compensation must be applied for separately.

P.G. submitted that Tenant O.G. should not be named on the Applications because they were "compelled" to sign the tenancy agreement. P.G.'s reasoning for O.G. being "compelled" to sign the tenancy agreement was that the Landlord's agents said that the Tenants would not get the rental unit unless O.G. signed the tenancy agreement. P.G. advised that they are not arguing duress. P.G. did not provide any legal authority for their position about O.G. being "compelled" to sign the tenancy agreement making it invalid. Further, I cannot see how O.G. was "compelled" to sign the tenancy agreement

such that it is not valid. O.G. had two choices – to sign the tenancy agreement or not sign the tenancy agreement. Not getting a rental unit because parties choose not to sign a tenancy agreement is a completely obvious and normal consequence of choosing not to sign a tenancy agreement and does not make the agreement invalid. I decline to remove O.G. from the Applications.

P.G. raised the issue of an adjournment because some of their evidence was not before me. The evidence relevant to the issues I must decide is before me and therefore I did not find an adjournment was required.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

At the first hearing, G.L. confirmed receipt of the hearing package and evidence for the Tenants' Application and confirmed there were no service issues. At the hearings, P.G. relied on a photo of the Notice and photo of a rent receipt submitted. At the second hearing, G.L. testified that they did not receive these documents. The Tenants submitted proof of service of their evidence being a registered mail receipt with tracking number ending 379. The Tenants submitted a delivery confirmation for tracking number ending 379, showing the package was signed for December 29, 2022. I am satisfied based on the documentary evidence of service and acknowledgement by G.L. of receipt of the Tenants' evidence at the first hearing that the Tenants' evidence was served on the Landlord as required. I find it unlikely that the Landlord happened to not receive the two most crucial pieces of evidence provided by the Tenants. I note that G.L. did not state at the first hearing that they did not receive the photo of the Notice, despite P.G. and myself referring to it and despite me telling the parties my decision given the photo of the Notice submitted. The Tenants' evidence is admissible.

P.G. testified at the first hearing that they received the hearing package for the Landlord's Application but only some of the Landlord's evidence. I told G.L. to refer to the evidence they were relying on during the hearing so P.G. could advise if they received it or not and we could address service at that point if needed.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all 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 recover the filing fee?
3. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?
4. Is the Landlord entitled to recover unpaid rent?
5. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started August 01, 2022. Rent is \$5,000.00 per month due on the first day of each month.

Notice

The Tenants submitted a photo of the Notice attached to their door showing it was not signed or dated. P.G. confirmed the Tenants submit that the Notice does not comply with section 52 of the *Act*.

G.L. testified that they served the Notice and did sign and date the Notice.

I note that the Landlord submitted a photo of the Notice posted to the Tenants' door as well; however, it is taken from so far away that I cannot see whether the Notice was signed and dated.

Unpaid Rent

G.L. testified that the Tenants owe \$30,000.00 in unpaid rent for August of 2022 to January of 2023.

P.G. testified that the Tenants paid \$10,000.00 in rent from August of 2022 to January of 2023. P.G. agreed the Tenants have not paid any rent since October 2022. P.G. relied on a receipt in evidence to show the Tenants paid \$10,000.00 in rent during the

relevant period. P.G. testified that the proposed witness was present when the rent payment was made but could not appear at the second hearing due to illness. P.G. acknowledged the Tenants did not have authority under the *Act* to withhold rent at any point.

G.L. testified that the Tenants did not pay \$10,000.00 in rent as alleged and never paid the Landlord cash. G.L. referred to bank statements showing that payments by the Tenants bounced and emails between them and P.G.

Analysis

Notice

Based on the photo provided by the Tenants, I accept the Notice served on the Tenants was not signed or dated. The Landlord has not submitted compelling evidence to contradict this.

I find the Notice does not comply with section 52 of the *Act* as required by section 46(2) of the *Act* and I cancel the Notice.

Unpaid Rent

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.

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*)
6. When the landlord consents to the tenants withholding rent

I accept that the Tenants owe the Landlord \$20,000.00 in unpaid rent as of today's date because P.G. acknowledged the Tenants have not paid any rent since October 2022. I read the six reasons the Tenants could have withheld rent out during the hearing and P.G did not point to any authority under the *Act* for the Tenants to have withheld rent since October of 2022.

Based on the cash receipt in evidence, I accept the Tenants paid \$10,000.00 in rent August 22, 2022. I acknowledge the receipt is for \$12,850.00; however, it is clear from the materials the amount over \$10,000.00 relates to other fees. I have reviewed all of the Landlord's evidence and none of it contradicts the cash receipt. For me to accept that the Tenants did not pay \$10,000.00 in rent, I would have to find the Tenants have committed fraud by creating and signing the receipt themselves. There is simply insufficient evidence before me to find that this is the case.

Given the above, I find the Tenants owe the Landlord \$20,000.00 in unpaid rent for October of 2022 to January of 2023. I issue the Landlord a Monetary Order in this amount.

Filing fees

Both parties were partially successful in their Applications and therefore each can bear the costs of their own filing fee.

Conclusion

The Notice is cancelled.

The Landlord is issued a Monetary Order in the amount of \$20,000.00. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that 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 *Act*.

Dated: January 27, 2023

Residential Tenancy Branch