



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR

Introduction

This hearing was scheduled to convene at 11:00 a.m. on January 3, 2023 by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The landlord attended the hearing with an agent, and the landlord's agent gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call. The landlord attended, prepared to respond to the tenants' application, and since the tenants have not attended, I dismiss the tenants' application without leave to reapply.

The landlord's agent testified that all of the landlords' evidence was served to the tenants, and I accept that testimony. All evidence provided by the parties has been reviewed and is considered in this Decision.

The *Residential Tenancy Act* states as follows:

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.

In order to determine whether or not Section 55 applies, I affirmed the landlord's agent.

Issue(s) to be Decided

The issues to be decided are:

- Has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 17, 2022 was issued in accordance with the *Residential Tenancy Act*?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?

Background and Evidence

The landlord's agent testified that this fixed-term tenancy began on September 15, 2021 and reverted to a month-to-month tenancy after September 15, 2022, and the tenants still reside in the rental unit. Rent in the amount of \$3,000.00 is payable on the 15th day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,500.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided by the landlord for this hearing.

The landlord's agent further testified that the tenants did not pay full rent for July, 2022, leaving \$300.00 outstanding, and have not paid any rent for the months of August, September, October, November or December, 2022 and are currently in arrears of rent the sum of \$15,300.00.

On August 17, 2022 the landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door, witnessed by the landlord's agent. A copy of the Notice has been provided for this hearing and it is dated August 17, 2022 and contains an effective date of vacancy of August 28, 2022 for unpaid rent in the amount of \$3,300.00 that was due on August 15, 2022 and unpaid utilities in the amount of \$100.00 following written demand on August 15, 2022. The

tenants are required to pay \$100.00 per month for utilities but have not paid since August 2022.

Analysis

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*. Having dismissed the tenants' application to cancel it, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Section 55 does not permit me to grant monetary compensation to the landlord with respect to unpaid utilities. With respect to the unpaid rent, I have reviewed the e-transfer payment history provided by the landlord, which shows that in August, 2022 the tenants paid \$2,800.00, and I find that the testimony of the landlord's agent specifying that \$300.00 is owed for August includes utilities. Since the *Act* does not permit me to make an order with respect to unpaid utilities, the landlord may make an application and serve the tenants. I find that the landlord has established that the tenants are in arrears of rent the sum of \$200.00 for August, 2022. However, I find that the tenants are also in arrears of rent the sum of \$3,000.00 for each of the months of September, October, November and December, 2022, totaling \$12,000.00, in addition to the \$200.00 owed for August, 2022. Therefore, I grant a monetary order in favour of the landlord as against the tenants in the amount of \$12,200.00.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed in its entirety without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants with respect to unpaid rent, pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$12,200.00.

This order is final and binding and may be enforced.

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: January 03, 2023

Residential Tenancy Branch