



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC, FFT, OPR-DR, MNR-DR, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Residential Tenancy Act (the "Act") for Orders as follows:

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The tenants applied as follows:

- For cancellation of the landlords' 10 Day Notice pursuant to section 46 of the Act
- For an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

The landlord applied as follows:

- For a monetary order for unpaid rent pursuant to section 67 of the Act
- For an order of possession pursuant to section 55 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlords KA and AA appeared along with counsel AB. Tenants EJ and JM appeared with advocate CF. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenants confirmed receipt of the 10 Day Notice dated November 17, 2022 with an effective date of November 29, 2022. Pursuant to section 88 of the Act the tenants are found to have been served with this notice in accordance with the Act.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the Act.

Preliminary Issues

Severance

The tenants applied for several other orders in addition to cancellation of the 10 Day Notice. These issues are not related to the dispute of the 10 Day Notice and are therefore severed pursuant to Rule 2.3 of the RTB Rules of Procedure. The tenants have leave to reapply on these issues. This decision does not extend any time limits set out in the Act.

Amend Style of Cause

The tenant JM appeared at the hearing and stated he was also a tenant and properly named in the application. No objection to this amendment was received by the parties. The style of cause of the application is therefore amended pursuant to section 64(3)(c) of the Act to add JM as a tenant.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenants? If so, is the landlord entitled to an order of possession? Can the tenants cancel the notice?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is either party entitled to a reimbursement for their respective filing fees?
4. Should the landlord be ordered to comply with the Act?

Background and Evidence

The tenancy commenced January 15, 2021 and is currently on a month to month basis. Rent was \$1,500.00 due on the 15th of each month. A rent increase was scheduled to take effect December 15, 2022 to increase the rent to \$1,522.50. The landlord still holds a security deposit of \$750.00 in trust for the tenants. The tenants received a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") on November 12, 2022.

As a result of receiving the Two Month Notice, the tenants vacated the rental unit on December 17, 2022.

The parties agreed that the tenant paid rent for October 15, 2022 to November 14, 2022 however the tenant did not pay rent on November 15, 2022 for the period November 15, 2022 to December 14, 2022. The landlord issued the 10 Day Notice on November 17, 2022.

The position of counsel for the landlord is that the 10 Day Notice was issued because the tenant did not pay rent on November 15, 2022 and on December 15, 2022, did not vacate the rental unit December 17, 2022, and did not give the landlord a notice ending the tenancy early on that date. The landlord took the position that the tenant did not vacate on December 17, 2022 as the keys had not been returned. The landlord is seeking a monetary order for unpaid rent in the amount of \$2,486.75 for rent from December 15, 2022 until the date of the hearing, as the landlord's position is that the tenants have not yet vacated the rental unit as they have not turned over the keys to the landlord.

Analysis

Based on the testimony of the parties, I find the tenants vacated the rental unit on December 17, 2022, therefore the portions of the applications related to Orders of Possession, Cancellation of the 10 Day Notice to End Tenancy, for an Order directly to comply with the Act are moot. I will only consider the landlord's application for a monetary award related to unpaid rent.

I find that the landlord has not established that the 10 Day Notice is valid and enforceable. As the tenants are also given the opportunity under section 50 of the Act to end a tenancy early upon receipt of a notice under section 49 of the Act, the landlord could not have known at the point that he issued the 10 Day Notice, whether the tenants were going to end the tenancy early. The 10 Day Notice was premature, and is therefore not valid. The tenants' application disputing the 10 Day Notice is granted and the landlord is not entitled to an order of possession.

Conclusion

The tenant's application to cancel the notice to end tenancy, for orders directing the landlord to comply with the Act are dismissed without leave to reapply.

The landlord's application for an Order of Possession and a Monetary Order are dismissed without leave to reapply.

Both parties must bear the cost of their own filing fee.

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: February 17, 2023

Residential Tenancy Branch