



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR,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 tenant applied as follows:

- For cancellation of the landlords’ 10 Day Notice pursuant to section 46 of the Act

The landlords 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

Both parties attended the hearing with the landlords being represented by agent AA. The tenant SB appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the 10 Day Notice to End Tenancy (“10 Day Notice”) dated November 7, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with the 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.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to reimbursement of the filing fee?

Background and Evidence

The tenancy commenced November 1, 2018, on a month to month basis. Rent was \$2,342.00 per month due on the first of the month. The landlords hold a security deposit of \$1,125.00. The tenant vacated the rental property on January 31, 2023.

The tenant confirmed that they no longer wish to occupy the rental unit.

The landlords' agent confirmed that they are no longer seeking an order of possession for the rental unit, and the only relief they are seeking is unpaid rent from October 2022 to January 2023. The monthly rent is \$2,342.00. The landlords provided a direct request worksheet in evidence for unpaid rent in October and November 2022. The landlords are seeking four months of unpaid rent from October 2022 to January 2023, in the amount of \$2,342.00 monthly totalling \$9,368.00.

The tenant alleged that the landlords agreed to waive rent for the months now being claimed by the landlords and the tenant provided the following undated text exchange with the landlords' agent in evidence:

Please see below and let me know, thanks

I have spoke with the owners, and they are willing to waive the outstanding rent for October, November and December on the following 2 conditions.

1) the tenant needs to be fully moved out by January 30th, and

2) only one month of rent is collected for January 2023 (via cheque I'm assuming as the withdrawal date has passed).

As good faith, this will help recover some of the costs that have incurred during this time period, including the move out fee that will also need to be paid.

And on January 4, 2023 the landlords' agent sent the tenant the following by text message:

To help you out as tenant again, the owners are fine with you moving out by the end of January , they will not charge you the rent for January .

Analysis

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. As noted in Policy Guideline #16, in order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove their entitlement to a claim for a monetary award.

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so. However pursuant to section 26 of the Act, the tenant can lawfully withhold rent if the landlord agrees to allow the tenant to withhold rent. I find based on evidence before me that the landlords agreed that the tenant could withhold rent for October, November and December 2022, and January 2023. These are the months that the landlords claimed the tenant did not pay rent. Therefore I find that the landlords have not satisfied the onus to establish that they are entitled to compensation under the Act.

The landlords' application for an order of possession is moot as the tenant no longer occupies the rental unit. The landlords' application for compensation is dismissed. As the landlords are unsuccessful in their application the request for the filing fee is also dismissed. The tenant no longer wishes to occupy the rental unit therefore the tenant's application is now moot.

Conclusion

The landlords' application for compensation is dismissed without leave to reapply.

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 16, 2023

Residential Tenancy Branch