



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, CNR, CNL, OLC, FFL

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”).

On September 23, 2022, the Tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 21, 2022, and to cancel a Two Month Notice for Landlord’s Use of Property. The Tenants also applied for an order that the Landlord comply with the Act, Regulations, or tenancy agreement.

On October 12, 2022, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 2, 2022.

On November 25, 2022, the Landlord applied for an order of possession for the rental unit and a monetary order for unpaid rent based on the issuance of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 5, 2022.

The matter was set for a conference call hearing. The Landlord attended the hearing; however, the Tenants did not. At the start of the hearing, I introduced myself and the Landlord was provided an opportunity to ask questions about the hearing process. The Landlord provided affirmed oral testimony and made submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the tenancy ending based on a 10 Day Notice to End Tenancy for Unpaid Rent?
- Is the Landlord entitled to an order of possession and a monetary order for unpaid rent?

Background and Evidence

The Landlord testified that the tenancy began July 1, 2019, as a one-year fixed term tenancy. Rent in the amount of \$2,334.00 is due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,150.00.

10 Day Notice

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 21, 2022 ("the 10 Day Notice"). The 10 Day Notice indicates the Tenants have failed to pay rent in the amount of \$3,501.00 that was due by September 1, 2022. The Landlord provided a copy of the 10 Day Notice.

The Landlord testified that she served the Tenants with the 10 Day Notice in person to M.C. at the rental unit on September 21, 2022.

The 10 Day 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. The Tenants disputed the 10 Day Notice on September 23, 2022, within the required timeframe, but failed to attend this hearing to pursue the dispute.

The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement within five days of receiving of the 10 Day Notice. The Landlord testified that the Tenants have not paid any rent owing under the tenancy agreement since the 10 Day Notice was served.

The Landlord is requesting an order of possession for the rental unit and a monetary order for unpaid rent in the amount of \$15,171.00.

The Landlord provided testimony confirming that the Tenants owe the following amount of unpaid rent.

September 2022	\$1167.00
October 2022	\$2,334.00
November 2022	\$2,334.00
December 2022	\$2,334.00
January 2022	\$2,334.00
February 2022	\$2,334.00
total	\$15,171.00

The Landlord issued two other 10 Day Notices to End Tenancy for Unpaid Rent which were not disputed by the Tenants. The Landlord submitted that the 10 Day Notice dated October 2, 2022, was posted to the Tenants' door on October 7, 2022 and the 10 Day Notice dated November 5, 2022 was posted to the Tenants' door on November 5, 2022.

The Landlord testified that the Tenants were served with The Notices of Dispute Resolution Proceeding using registered mail sent on October 27, 2022 and December 2, 2022. The Landlord provided a copy of the registered mail receipts as proof of service.

Analysis

The Tenants failed to attend the hearing to pursue their dispute of the 10 Day Notice dated September 21, 2022. I find that the Tenants were properly served with the Landlord's Notices of Dispute Resolution Proceeding and they failed to attend the hearing in response to the Landlord's applications.

Section 26 of the Act provides that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenants received the 10 Day Notice dated September 21, 2022, and they failed to pay the outstanding rent within 5 days of receiving the 10 Day Notice.

I dismiss the Tenant's application to cancel the 10 Day Notice dated September 21, 2022.

Under section 55 of the Act, when a tenants application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective two (2) 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 that the Tenants have failed to pay the rent owing under the tenancy agreement. I find that the Tenants owe the Landlord \$15,171.00. in unpaid rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$15,271.00 comprised of \$15,171.00 in unpaid rent for the above-mentioned months and the \$100.00 fee paid by the Landlord for this hearing. I grant the Landlord a monetary order for \$15,271.00. This monetary 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.

Since the tenancy is ending based on the 10 Day notice dated September 21, 2022, there is no need to grant an order of possession based on the two other 10 Day Notices that were served by the Landlord to the Tenants and not disputed.

Conclusion

The Tenants failed to pay the rent owing under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 21, 2022.

The Tenants' application to cancel the 10 Day Notice is dismissed and the Landlord is granted an order of possession for the rental unit effective two (2) days after service on the Tenants.

The Landlord is granted a monetary order for unpaid rent and the cost of the filing fee in the amount of \$15,271.00.

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 09, 2023

Residential Tenancy Branch