



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PORT ROYAL VILLAGE DEV
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the *Residential Tenancy Act* (the “Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) issued on February 6, 2023, and to recover the cost of the filing fee.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

In this matter I have considered the Residential Tenancy Branch Rules of Procedure 2.10 Joining applications. The landlord has filed an application for an order of possession and monetary order for unpaid rent that is scheduled to be heard on May 9, 2023; however, I must consider the same facts on the tenants’ application and if the Notice is found valid, I must grant the landlord the relief sought in their application pursuant to section 55 of the Act. I find this is not prejudicial to the tenants as the outcome would not change and be consistent with the Act. Therefore, I have joined the landlord’s application to be heard with the tenants’ application. The hearing of May 9, 2023, is cancelled.

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the *Residential Tenancy Act* (the “Act”) for an order of possession, for a monetary order for unpaid rent, and to recover the cost of the filing fee.

Issue(s) to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on October 1, 2021. Rent in the amount of \$2,030.00 was payable on the first of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were paid by the tenants.

The parties agreed that the tenants were served with the Notice on February 6, 2023. Filed in evidence is a copy of the Notice.

The tenant testified that they did not pay the amount listed in the Notice because they had a payment arrangement with the landlord. The tenant confirmed at the hearing that they paid the amount of \$150.00 after receiving the Notice and no rent was paid for March 2023.

The landlord testified that they found nothing in the tenants file that the landlord agreed to rent being paid on different dates. The landlord stated that the tenants owe the amount of \$1,080.00 for February 2023 rent, and \$2,030.00 for March 2023 rent. The landlord stated that the tenant also owes \$25.00 for each month for late payment of rent. The landlord stated that they seek an order of possession and a monetary order.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords to end a tenancy if the tenant does not pay rent on time by issuing a *10 Day Notice to End Tenancy for Unpaid Rent*.

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

In this case, the tenant indicated that they had a payment arrangement with the landlord to pay rent late. However, the tenant has presented no documentary evidence to support that there was a pre-agreed payment arrangement for the rent. Further, it

appears by the rent ledger there is no consistency with the dates that rent was paid. Further, even if such a verbal agreement was made, which I am not satisfied there was, clearly the tenants have not honoured that agreement as they did not pay all rent owed for February and no rent has been paid for March 2023. Therefore, I find the Notice is valid and remains in full force and effect. Therefore, I dismiss the tenants' application.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two 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.

Further, the evidence of the parties supports rent in the amount of \$3,110.00 remains unpaid for February and March 2023 and two late payments totalling \$50.00.

I find the landlord has established a monetary order in the amount of **\$3,260.00** comprise of unpaid rent, the late fees and to recover the cost of the filing fee. I grant the landlord a formal order pursuant to section 55(1.1) and 67 of the Act. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Should the above monetary remained unpaid at the end of the tenancy. The landlord may retain the security deposit and pet damage deposit pursuant to section 38(4) of the Act to offset the amount owed.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession and a monetary order as set out above.

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: March 16, 2023

Residential Tenancy Branch