



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RR, RP, LRE

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 October 16, 2022, to reduce rent for repairs, to have repairs made to the rental unit, and to suspend or set conditions on the landlord’s right to enter the rental.

Only the landlord appeared. On January 18, 2023, the Residential Tenancy Branch sent an email to the tenants to verify that the hearing is still required. On February 22, 2023 the tenants responded as follows:

“Hi. We have given notice to our Landlord that we will move out end if day april 1 and we will pay them what we owe over time so i dont think the hearing is necessary”

[Reproduced as written]

On February 23, 2023, the Residential Tenancy Branch contacted the landlord, and the landlord was not agreeable to cancelling the hearing.

The tenants are cautioned that they cannot cancel a hearing without the consent of the landlord. It is not up to the tenants to determine when their tenancy will end once they have received the Notice, or what they will pay to the landlord overtime. Therefore, the hearing proceeded in the absence of the tenants.

Issue to be Decided

Should the Notice be cancelled?

Should other relief be granted to the tenants as requested in the application?

Background and Evidence

The tenant acknowledge in their application that they received the Notice on October 16, 2022.

The tenants submit the following in their application.

“The amounts are inaccurate. We have been waiting over a year for a fridge and stove that properly work. We have fallen on hard times but have offered to pay extra every month”

[Reproduced as written]

The landlord testified that at the time the Notice was issued the tenants had failed to pay the amount of \$10,250.00. The landlord stated that the tenants did not pay any money towards the arrears and have failed to pay subsequent monthly rent of \$2,050.00 for November, December 2022 and January, February 2023 for an additional \$8,200.00. The landlord seeks an order of possession and a monetary order for the unpaid rent in the amount of \$18,450.00. Filed in evidence is a copy of the Notice.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act.

Landlord's notice: non-payment of rent

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

...

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

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

Under the legislation the tenants may dispute the Notice for specific reasons, such as they have proof that their rent was paid or that the tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Although the tenant filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice. While the tenants indicated the amount was incorrect they provided no evidence to support this. I find the tenants have breached section 26 of the Act when they failed to pay rent. Therefore, I dismiss the tenants' application to cancel the Notice without leave to reapply.

As the tenants' application is dismissed, I find I must grant the landlord an order of possession and a monetary order for unpaid, pursuant to section 55 of the Act.

Order of possession for the landlord

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.

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.

I find that the landlord is entitled to a monetary order for the unpaid rent , pursuant to section 55(1.1) of the Act in the amount of **\$18,450.00**. This order may be filed in the Provincial Court and enforce as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Should the above amount remain unpaid the landlord is entitled to retain the security deposit to offset the above debt, pursuant to section 38(3) of the Act.

As the balance of the tenants' application is related to the tenancy continue. I find it appropriate to dismiss the balance of the application without leave to reapply.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession.

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 01, 2023

Residential Tenancy Branch