



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RP (Tenants)
 OPU-DR (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties (the “Applications”).

The Tenants filed their application November 12, 2022 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated November 03, 2022 (the “Notice”)
- For a repair order

The Landlord filed their application December 06, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the Notice

The Tenant appeared at the hearing. The Landlord appeared at the hearing with G.S. to assist. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

An issue arose about who are tenants of the rental unit and who are occupants. A written tenancy agreement naming the Tenants was submitted. Based on the written tenancy agreement, I accept the Tenants are tenants. However, I do not accept that the remaining two tenants originally named on the Tenants’ Application are tenants and find

they are occupants of the rental unit because they are not named on the tenancy agreement and the Landlord did not agree they are tenants.

I dismissed the Tenants' request for a repair order with leave to re-apply under rule 2.3 of the Rules.

The Landlord sought both an Order of Possession and Monetary Order for unpaid rent based on the Notice.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlord testified that they did not receive the hearing package or evidence for the Tenants' Application. The Tenant testified that the hearing package and evidence were sent to the Landlord by email; however, there was no documentary evidence of service before me. I was not satisfied the Tenants' hearing package and evidence were served on the Landlord as required. I dismissed the Tenants' Application with leave to re-apply. I exclude the Tenants' evidence, other than the Notice, under rule 3.17 of the Rules given it was not served as required by rule 3.14 of the Rules.

The Tenant testified that they did not receive the hearing package or evidence for the Landlord's Application. The Landlord testified that the hearing package and evidence were attached to the rental unit door; however, there was no documentary evidence of service before me. I was not satisfied the Landlord's hearing package and evidence were served on the Tenants as required. I dismissed the Landlord's Application with leave to re-apply. I exclude the Landlord's evidence, other than the tenancy agreement, under rule 3.17 of the Rules given it was not served as required by rule 3.14 of the Rules.

Given the Tenants' Application was dismissed, I had to consider section 55(1) and (1.1) of the *Residential Tenancy Act* (the "*Act*") and heard the parties on the Notice and unpaid rent.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice under section 55(1) of the *Act*?

2. Is the Landlord entitled to a Monetary Order for unpaid rent under section 55(1.1) of the *Act*?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The agreement started June 01, 2022. Rent is \$1,800.00 per month due on the first day of each month. The Tenants paid a \$900.00 security deposit and \$450.00 pet damage deposit.

The Landlord sought to keep the security and pet damage deposits towards unpaid rent.

The Notice was submitted as evidence. The Notice states that the Tenants failed to pay \$3,300.00 in rent due November 01, 2022, and \$1,800.00 in utilities due November 01, 2022.

The Landlord testified that they posted the Notice to the rental unit door November 03, 2022. The Tenants testified that they received the Notice November 06, 2022.

The Landlord testified that the Tenants failed to pay \$300.00 in rent for August, \$600.00 in rent for September, \$1,200.00 in rent for October and \$1,200.00 in rent for November of 2022. The Landlord testified that the Tenants have not paid rent since being issued the Notice. The Landlord testified that there is now \$1,800.00 in rent outstanding for each of December 2022 as well as January, February and March of 2023.

The Tenant testified that they paid full rent for August and September 2022. The Tenant agreed they did not pay \$1,200.00 of October rent and \$1,200.00 of November rent. I read out the six reasons tenants can withhold rent and the Tenant acknowledged none of these six reasons applied. The Tenant agreed they have not paid rent for December of 2022 or for January to March of 2023. The Tenant acknowledged none of the six reasons for withholding rent applied.

The Landlord confirmed a water bill dated October 31, 2022, for \$1,042.36 was not paid by the Tenants. The Tenant acknowledged receiving a copy of the water bill and not paying it. The Tenant acknowledged they would usually be responsible to pay the bill but disputed the amount of the bill on the basis that it was higher than previous bills and there must have been a leak in the rental unit.

The Landlord denied that there was a leak in the rental unit prior to the October 31, 2022 water bill being issued.

The Landlord sought an Order of Possession effective March 31, 2023.

Analysis

Section 26(1) of the *Act* states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Section 46 of the *Act* allows a landlord to end a tenancy when tenants fail to pay rent. The relevant portions of section 46 state:

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...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(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.

There are only six reasons tenants can withhold rent:

1. When a landlord collects a security or pet damage deposit that is above the permitted amount (section 19(2) of the *Act*);

2. When section 33 of the *Act* in relation to emergency repairs applies;
3. When the landlord imposes a rent increase that is above the amount allowed by law (section 43(5) of the *Act*);
4. When the landlord issues the tenants a notice to end tenancy under section 49 of the *Act* for landlord's use of property (section 51 of the *Act*);
5. When an arbitrator allows the tenants to withhold rent (section 65(1)(f) of the *Act*); and
6. When the landlord consents to the tenants withholding rent.

Based on the written tenancy agreement, I find the Tenants had to pay \$1,800.00 in rent by the first day of each month under the tenancy agreement.

The parties disagreed about whether the Tenants paid August and September rent. The Landlord has the onus to prove this rent was not paid because it is the Landlord seeking the Order of Possession and Monetary Order. Without further evidence, I am not satisfied the Tenants failed to pay August and September rent.

I accept that the Tenants did not pay \$1,200.00 of October rent and \$1,200.00 of November rent because the Tenant acknowledged this. I find the Tenants did not have authority under the *Act* to withhold this rent because the Tenant acknowledged this.

Given the Tenants did not pay October and November rent in full, the Landlord was allowed to serve the Notice. I accept the Tenants received the Notice November 06, 2022, because this is in line with both parties' testimony.

I have reviewed the Notice and it complies with section 52 of the *Act*. I acknowledge that I have found the Tenants only owed \$2,400.00 in rent due November 01, 2022, which is different than the amount on the Notice. However, this does not invalidate the Notice. The Notice is valid as long as some rent was owing when the Notice was issued.

The Tenants had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice.

I find the Tenants did not pay the outstanding rent because the Tenant acknowledged this.

The Tenants disputed the Notice in time; however, their dispute has been dismissed because they failed to prove service. Further, even if the Tenants had proved service, the Tenants have no valid basis to dispute the Notice because they admit they did not pay rent and did not have authority under the *Act* to withhold it.

Section 55(1) of the *Act* states:

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...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The Landlord is entitled to an Order of Possession under section 55(1) of the *Act* and is issued an Order effective two days after service on the Tenants.

Section 55(1.1) of the *Act* states:

(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.

Based on the testimony of both parties, I find the following rent is owed:

- October 2022 - \$1,200.00
- November 2022 - \$1,200.00
- December 2022 - \$1,800.00
- January 2023 - \$1,800.00
- February 2023 - \$1,800.00
- March 2023 - \$1,800.00
- Total = \$9,600.00

The Tenants also owe the Landlord for the water bill being \$1,042.36. The Tenants have not provided any admissible evidence showing the water bill was high due to no fault of their own. The Landlord is awarded \$1,042.36 for unpaid utilities.

The Tenants owe the Landlord \$10,642.36. The Landlord can keep the \$900.00 security deposit and \$450.00 pet damage deposit towards this. The Landlord is issued a Monetary Order for \$9,292.36.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order for \$9,292.36. This Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 31, 2023

Residential Tenancy Branch