



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, MNDCT, RP, OLC

Introduction

This hearing dealt with the tenants' application under the *Residential Tenancy Act* (the "Act") for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to section 46(4)(b) of the Act;
- (ii) more time to dispute the Notice pursuant to section 66 of the Act;
- (iii) a monetary order for damage or compensation pursuant to section 67 of the Act;
- (iv) an order for regular repairs pursuant to section 32 and 62(3) of the Act; and
- (v) an order for the landlord to comply with the Act, the Residential Tenancy Regulations and/or the tenancy agreement pursuant to section 62 of the Act.

The tenants and landlord attended the hearing. The landlord also called witness A.P. to provide testimony during the hearing.

Preliminary Issue- Unrelated Claims

Rules of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims.

It is my determination that the claim regarding the Notice is not sufficiently related to any of the tenants' other claims to warrant that they be heard together. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except for the cancellation of the Notice (and the related request for an extension of time).

Issue(s) to be Decided

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began December 1, 2021. Rent is \$1,000.00 due on the first day of the month. It is a month-to-month tenancy. The landlord currently retains a security deposit and a pet damage deposit. The tenants are currently occupying the rental unit.

The landlord affirmed that the security deposit was \$500.00 and the pet damage deposit \$500.00. This matches what is recorded on the written tenancy agreement. The tenants affirmed that the security deposit was \$750.00 and pet damage deposit was \$750.00. In the tenants' Application for Dispute Resolution (the "Application"), the tenants noted that the amount of security deposit was \$500.00 and the pet damage deposit was \$1,000.00. Due to the tenants' inconsistency, I prefer the evidence of the landlord.

The landlord's witness A.P. affirmed that A.P. served the Notice on September 14, 2022 in person to the tenant K.P.H, who was present to receive it. Page two of the Notice indicates that the tenants did not pay rent in the amount of \$1,000.00 that was due on September 1, 2022. All pages of the Notice were served and submitted into evidence.

The tenants affirmed that they did not receive the Notice on September 14, 2022 because the tenants' dog ate the Notice. Instead, the tenants affirmed that the tenants received another copy of the Notice on September 18, 2022. In their Application, the tenants stated that they received the Notice on September 16, 2022

The Residential Tenancy Branch's internal records show the tenants filed their Application to dispute the Notice on September 26, 2022. In response to the question of what prevented the tenants from applying within five days after receiving the Notice, the tenants referred to the poor condition of the rental unit and the need for them to be hospitalized. The dates the tenants provided for their hospitalization were after they filed the application to dispute the Notice.

In their testimony, both tenants acknowledged that they stopped paying rent due to the poor conditions of the rental unit. The landlord and tenants agreed that the landlord did receive rent for October 1, 2022.

Analysis

Section 26 of the Act requires a tenant 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*.

A tenant who receives a *10 Day Notice to End Tenancy for Unpaid Rent* under this section has five days after the receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant fails to do either within the five days, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the Act.

Section 66 of the Act and Policy Guideline 36 (*Extending a Time Period*) states that an arbitrator may *not* extend the time limit to apply for arbitration to dispute a Notice to End Tenancy if that application to dispute the Notice was filed after the effective date of such notice.

Since in their Application, the tenants stated that they received the Notice on September 16, 2022 rather than September 18, 2022, which was what they testified during the hearing, I afford more weight to the testimony of the landlord due to their consistency. I find that the tenants were personally served with the Notice on September 14, 2022, which means the effective date of the Notice was September 24, 2022. As the Residential Tenancy Branch's internal records show that the tenants filed the Application on September 26, 2022, the tenants filed after the effective date of the Notice.

In the present case, there was no evidence that the tenants paid the rent in full within the five days required and the tenants only filed the Application on September 26, 2022, which is twelve days after receipt of the Notice. As such, I find that the tenants are conclusively presumed to have accepted the end of the tenancy.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this decision

and must be served on the tenants. The tenants have two days to vacate the rental unit from the date of service or deemed service.

The landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. As the tenants are still occupying the unit, I find that the tenants have failed to pay rent as follows:

Month	Rent Due	Rent Paid	Rent Unpaid
September 1, 2022	\$1,000.00	n/a	(\$1,000.00)
October 1, 2022	\$1,000.00	\$1,000.00	0
November 1, 2022	\$1,000.00	n/a	(\$1,000.00)
December 1, 2022	\$1,000.00	n/a	(\$1,000.00)
January 1, 2022	\$1,000.00	n/a	(\$1,000.00)
February 1, 2022	\$1,000.00	n/a	(\$1,000.00)
	\$6,000.00	\$1,000.00	(\$5,000.00)

The tenants are ordered to pay \$5,000.00 in unpaid rent to the landlord.

Under sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,000.00 in deposits as partial satisfaction of the arrears. A monetary order for the remaining amount is attached to this Decision and must be served on the tenants.

Conclusion

The application is dismissed without leave to reapply. The landlord is awarded an Order of Possession and a Monetary Order in the amount of \$4,000.00.

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

Dated: March 6, 2023

Residential Tenancy Branch