



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OLC, FFT

Introduction

On March 7, 2023, the tenants applied 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 *Residential Tenancy Act* (the “Act”), (ii) an order requiring the landlord to comply with the Act pursuant to section 62 of the Act, and (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

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 and the recovery of the filing fee is not sufficiently related to the tenants’ other claim to warrant that they be heard together. I exercise my discretion to dismiss the tenants’ other claim with leave to reapply and will deal only with the cancellation of the Notice (and the related request for recovery of the filing fee).

Issues

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

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 March 31, 2015. Rent is \$2,700.00 due on the first day of the month. The landlord currently retains a \$1,200.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on March 3, 2023 by email, which the tenants confirmed receipt of. Page two of the Notice indicates that the tenants did not pay rent in the amount of \$2,700.00 that was due on March 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenants failed to pay rent in the amount of \$2,700.00 when it became due on March 1, 2023. Instead, the tenants attempted to pay the rent on March 14, 2023, which the landlord rejected. The landlord affirmed that the total amount of rental arrears is \$2,700.00.

The tenants affirmed that the tenants only attempted to pay the rent on March 14, 2023. The tenants further affirmed that the reason for the lateness was because the sub-tenant was travelling and dealing with a family emergency.

Analysis

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*. Section 46(5) of the Act states that if a tenant pays the overdue rent within five days after receiving the *10 Day Notice to End Tenancy for Unpaid Rent*, that notice would have no effect.

The landlord's evidence show that the tenants did not pay the rent on March 1, 2023 and only attempted to pay the rent on March 14, 2023, which is beyond the five days the tenants have under the Act. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason. I also find that the Notice complies with the form and content requirements of section 52 of the Act. As a result, the tenants' application to cancel the Notice is dismissed.

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.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenants are ordered to pay \$2,700.00 in unpaid rent to the landlord.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,200.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$1,500.00 is attached to this Decision and must be served on the tenants.

Since the tenants were not successful in their application, the tenants' application to recover the cost of the filing fee under section 72 of the Act is dismissed.

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 \$1,500.00.

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: April 5, 2023

Residential Tenancy Branch