



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MARWAHA DEVELOPMENTS AND
INVESTORS and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNRT

Introduction

This hearing dealt with the tenants' application, filed on January 7, 2023, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 2, 2023, and effective January 12, 2023 ("10 Day Notice"), pursuant to section 46; and
- a monetary order for the cost of emergency repairs of \$559.34, pursuant to section 67.

The two applicant tenants, "tenant KA" and "tenant RB," did not attend this hearing. The respondent landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

This hearing lasted approximately 21 minutes from 11:00 a.m. to 11:21 a.m.

I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent left the hearing from 11:02 a.m. to 11:04 a.m. and from 11:04 a.m. to 11:07 a.m. The landlord's agent first called back in without using a speakerphone and then called in again using a landline instead of his cellular phone. I informed the landlord's agent that speakerphone and his cellular phone were causing echoing and feedback, making it difficult for me to hear.

The landlord's agent confirmed his name and spelling. He provided his email address for me to send a copy of this decision to the landlord after this hearing.

The landlord's agent provided the legal name of the landlord company ("landlord") named in this application. He stated that he is a shareholder of the landlord, and he had permission to represent it at this hearing. He said that the landlord owns the rental unit. He provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord's agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord's agent. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests. He confirmed that he was ready to proceed with this hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to include the legal name of the landlord. The landlord's agent consented to same during this hearing. I find no prejudice to either party in making this amendment.

Preliminary Issue – Dismissal of Tenants' Application

The landlord stated that he did not receive a copy of the tenants' application for dispute resolution hearing package. He said that he found out about this hearing when he received an email directly from the RTB.

Rule 7.3 of the RTB *Rules* states the following:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenants, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 55 of the *Act*, if I dismiss the tenants' application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets

the requirements of section 52 of the *Act* and the landlord provides sufficient evidence of same.

Pursuant to section 55 of the *Act*, the landlord is entitled to a monetary order for unpaid rent without filing a separate application, provided that the 10 Day Notice meets the requirements of section 52 of the *Act* and the landlord provides sufficient evidence of same.

At the outset of this hearing, the landlord affirmed that tenant KA vacated the rental unit. He said that tenant RB continues to occupy the rental unit. He stated that the landlord requires an order of possession against tenant RB. He explained that the landlord requires a monetary order for unpaid rent.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

Background and Evidence

While I have turned my mind to the tenants' documentary evidence and the testimony of the landlord's agent at this hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent testified regarding the following facts. This tenancy began on March 1, 2022. Both parties signed a written tenancy agreement. Monthly rent in the amount of \$2,000.00 is payable on the first day of each month. A security deposit of \$1,000.00 was due as per the written tenancy agreement, but the tenants did not pay it to the landlord.

The landlord's agent stated the following facts. The 10 Day Notice states that rent of \$2,000.00 was due on January 1, 2023. The tenants did not pay this rent to the landlord. They paid this rent to the landlord at the end of January 2023, but he does not know the amount. They did not pay January 2023 rent to the landlord. They paid full rent for May 2023 to the landlord. Each tenant owes \$1,000.00 to the landlord for the rent. There is still \$500.00 of unpaid rent owed.

Analysis

The landlord did not submit any documentary evidence to the RTB regarding this application. The landlord's agent did not provide any testimony at this hearing, regarding service of any landlord's evidence to the RTB or the tenants. The landlord did not provide a copy of the 10 Day Notice for this hearing, only the tenants did.

I repeatedly asked the landlord's agent whether the January 2023 unpaid rent indicated on the 10 Day Notice, was paid by the tenants. He repeatedly changed his testimony to indicate that rent was paid, that it was not paid, and that he did not know what was paid.

I repeatedly asked the landlord's agent to clarify if any rent was unpaid after January 2023, from the tenants. He stated that May 2023 rent was paid by the tenants, but he did not provide details as to whether February, March, or April 2023 rent was paid by the tenants.

The landlord did not provide any documentary evidence of unpaid rent for this hearing. The landlord's agent provided insufficient and conflicting testimony regarding unpaid rent at this hearing.

Therefore, I cannot issue an order of possession for unpaid rent to the landlord because I cannot determine whether the 10 Day Notice complies with section 52 of the *Act*. The landlord is required to provide sufficient evidence of the reason for ending this tenancy, which includes whether January 2023 rent was paid by the tenants, as indicated on the 10 Day Notice.

Further, I cannot issue a monetary order for unpaid rent to the landlord because I cannot determine what rent has or has not been paid by the tenants, since the landlord's agent provided conflictual and incomplete testimony regarding same, at this hearing.

For the above reasons, I do not issue an order of possession or a monetary order to the landlord, against the tenants.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

The landlord is not issued an order of possession or a monetary order for unpaid rent, against the tenants.

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: May 04, 2023

Residential Tenancy Branch