



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- a monetary order for damage to the rental unit pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice);
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to change the locks and/or to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the matters directly related to the Notice to End Tenancy for unpaid rent, I am exercising my discretion to dismiss the remainder of the issues identified in both the landlords' and tenants' applications with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

At the outset of the hearing, the landlord's counsel advised that in a hearing on March 2, 2023 (File # on the cover page of this decision), the landlord had already been granted an order of possession and the tenants subsequently vacated the rental unit as of March 15, 2023.

As the tenants have vacated the rental unit, the tenant's application to dispute the 10 Day Notice is moot and dismissed without leave to reapply.

Issues

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

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on November 1, 2022 with a monthly rent of \$3695.00 payable on the 1st day of each month. The tenants paid a security deposit of \$1797.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice dated February 9, 2023. The 10 Day Notice indicates the tenants failed to pay rent in the amount of \$3695.00 which was due on February 1, 2023.

The landlord testified the outstanding rent was not paid within 5 days and has not been paid to date. The landlord is also seeking unpaid rent for March 2023 and loss of rent for April 2023. The landlord testified that she was not able to re-rent the unit for April 2023 due the condition the house was left in.

The tenants did not dispute that rent was unpaid for February and March 2023; however, the tenants argued there were multiple issues with the rental unit such as mold. The tenants submit that it was the landlord that asked them to vacate and forcefully tried to remove them even offering money for them the leave. The tenants

submit they accepted the landlord's proposal, but the landlord then served them with an eviction notice while they were in the process of moving.

In reply, the landlord submits that the tenants were not happy with the rental unit and the landlord had only made suggestions during negotiations so the parties could part ways. The tenants declined the landlord's proposal and no formal agreement was reached.

Analysis

Section 26 of the Act requires that 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.

As stated at the outset of this decision, this hearing was only dealing with the issue of the landlord's application for "unpaid rent". Accordingly, any claims from the landlord for monetary compensation for "loss of rent" were not originally subject to this dispute and the landlord remains at liberty to reapply for such matters.

The tenants did not dispute that rent was not paid for February and March 2023. I find the tenants did not have a right under this Act to deduct or withhold the rent. I also find the tenants submitted insufficient evidence that the parties had formally agreed to part ways and that the landlord agreed to compensate the tenants for vacating. I find the landlord merely made suggestions which were not accepted by the tenants.

I have reviewed the related decision dated March 2, 2023 in which the parties settled the dispute as per the following terms:

The Parties mutually agree as follows:

- 1. The tenancy will end no later than 1:00 p.m. on March 15, 2023;**
- 2. If the Tenants move out of the unit on an earlier date the Landlord will accept short notice for that earlier move-out date; and**
- 3. These terms comprise the full and final settlement of all aspects of this dispute for both Parties.**

Based on the above settlement terms, I find the parties mutually agreed to end the tenancy effective March 15, 2023. Accordingly, I find the tenants were responsible to pay rent from February 1, 2023 to March 15, 2023.

The landlord is awarded \$3695.00 for unpaid rent for February 2023 and \$1787.90 for prorated rent for March 1-15, 2023 for a total of \$5482.90.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$5582.90.

The landlord continues to hold a security deposit of \$1797.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$3785.90.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$3785.90. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: May 01, 2023

Residential Tenancy Branch