



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, RP, OLC, OPR, MNU, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on April 4, 2023;
2. To have the landlords make repairs to the rental unit;
3. To have the landlords comply with the Act; and
4. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Should the Notice be cancelled?

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on March 1, 2022. Rent in the amount of \$3,750.00 payable on the first of each month. A security deposit of \$1,750.00 and a pet damage deposit of \$1,750.00 were paid by the tenants (the “Deposits”).

The tenants acknowledged in their application that they received the Notice on April 4, 2023. The tenant stated that they had paid rent for April in cash on April 1, 2023. The tenant stated that they did not pay the outstanding utilities as noted in the Notice.

The landlord testified that the tenants did not pay rent in cash on April 1, 2023, or any rent for May 2023. The landlord stated that the tenants have always paid rent by e-transfer.

The tenant testified that because the landlord sold the house, which they were not aware it had been listed, and the landlord wanted cash for April and May 2023. The tenant stated they also paid cash for May 2023, rent on May 1.

The landlord argued that they just sold the house and issued a Two Month Notice to End Tenancy for Landlord’s Use of Property, issued on April 25, 2023, with an effective date of June 2023. The landlord stated that the tenant is providing false testimony.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

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*.

...

Upon review of the Notice, I find the Notice is completed in accordance with the requirements of section 52 of the Act.

Under the legislation the tenant may dispute the Notice for specific reasons, **such as they have proof that their rent was paid** or that the tenant had the right under the Act to deduct all or a portion from their rent.

In this case, the tenant acknowledged that they did not pay the outstanding utilities listed in the Notice; I find the tenant breached the Act when they failed to pay the outstanding utilities.

The evidence of the tenant was that they paid rent for April and May 2023 in cash on the first day of these months.

I do not find the tenant credible for the following reasons although they gave affirmed testimony. First the tenants describe in their application filed on April 9, 2023, why they are disputing the Notice in their application which the details reads as follows:

Landlord, [name redacted] has violated the Residential Tenancy Act in several ways. These are the sections we would like to have mediation on the following talking points. - Please see attached PDF evidence.

I have read the PDF evidence which is a typed statement dated April 8, 2023. Nowhere in this written statement do they claim rent was paid in cash. The tenants were disputing the Notice on three issues which were related to a dishwasher ,a washing machine and because of black mould accumulating in the window track, which I note it is the tenant's responsibility to clean during the tenancy under the Residential Tenancy Branch Policy Guidelines.

Further the PDF evidence states the following

Below please see the Residential Tenancy Act sections in which we feel are being breached as is the reason for disputing the 10 day notice to end tenancy, with photo evidence in this document and also numerous other photographic evidence attached to this dispute notice.

I find if rent was paid on April 1, 2023, in cash as testified by the tenant then it would have been reasonable to stated that in their application and PDF evidence. Not stating other reasons for disputing the Notice. I find it more likely than not the tenants withheld rent because they were alleging the landlord breached the Act. I find it more likely than not the tenant provided false testimony at the hearing. I find the tenants breached the Act when they failed to pay rent April and May 2023.

Therefore, I dismiss the tenant's application in full without leave to reapply. I find the tenancy legally end on April 14, 2023, the date within the Notice and the tenants are overholding the rental unit.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

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 [*form and content of notice to end tenancy*], and

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

(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.

I find that the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

I find that the landlords are entitled to recover unpaid utilities in the amount of \$1,429.00, unpaid rent for April and May 2023 in the amount of \$7,140.00 and \$100.00 to recover the cost of the filing for the total amount of **\$8,669.00**.

I authorize the landlord to keep the Deposits of \$3,500.00 to offset the above amount. I grant the landlords a formal order for the balance due of **\$5,169.00, pursuant to section 55(1.1) and 67 of the Act**. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Further, as I have ended the tenancy for failure to pay rent. I find it appropriate to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property issued on April 25, 2023, as it is dated after I have found the tenancy has legally ended and the effective date will never take effect. The tenants are not entitled to any compensation under the Act or any other entitlements that are given under this notice to end tenancy.

Conclusion

The tenants' application is dismissed. The landlords are granted an order of possession and a monetary order as stated above.

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 26, 2023

Residential Tenancy Branch