



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, OPR-DR, MNR-DR, FFL

Introduction

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

The landlord's application is seeking orders as follows:

1. For an order of possession based on unpaid rent;
2. For a monetary order for unpaid rent, unpaid internet;
3. For a monetary order to recover late fees; and
4. 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 May 2, 2023.

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.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for repayment of rent, internet and late fees?

Background and Evidence

The tenancy began on February 1, 2022. Rent in the amount of \$3,570.00.00 was 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 tenants submit that they received the Notice on May 2, 2023, and provided the following details in their application.

Date notice was received:

May 2, 2023

Notice delivery method:

Sent to pre-agreed email

Describe why you are disputing the notice:

Paid \$500 on May 1/23. On May 01/23 explained to landlord that [named removed] started up his own business, his first contract, the customer bounced the cheque and waiting on payment. Told Landlord that the rent would be caught up by the end of the month. Never heard back from landlord until they sent a 10 day notice to end tenancy. We have four young boys and we cannot find a home for us within 10 days.

The tenant confirmed that they were in rent arrears as shown in the Notice in the amount of \$6,770.00. The tenant confirmed the only payments they have made to the landlord was the \$500.00 and the \$1,000.00.

The landlords submit the following for unpaid rent, internet and late fees are owed.

Rent 3570 + Internet 40 + Late 25	April 2023	\$3,635.00
Payment on May 1	April 2023	\$-500.00
Rent 3570 + Internet 40 + Late 25	May 2023	\$3,635.00
Payment on June 1	May 2023	\$-1,000.00
Rent 3570 + Internet 40 + Late 25	June 2023	\$3,635.00

Analysis

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

Section 26 of the Act, 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.

Section 46(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

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 tenants 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, such as an order from an Arbitrator.

Although the tenants filed an application for dispute resolution within the time limit permitted under the Act, I find the tenants' application had no merit as the tenant admitted rent was not paid within 5 days after receiving the Notice. While I accept the tenants may have financial difficulties due to starting up a new company; however, that is not a reason under the Act not to pay rent. I find the tenant breached the Act when they failed to pay the rent. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession and a monetary order for unpaid rent, pursuant to section 55 of the Act.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. 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.

In this case the tenants did not pay all rent for April, May 2023 and paid no rent for June 2023. I find the tenants owe the landlord \$10,710.00 less the two payments made totaling \$1,500.00. I find that the landlord is entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$9,210.00**.

The landlord is seeking to recover the unpaid internet of \$40.00 for April, May and June 2023. As this is a term of the tenancy agreement and was not paid, I find the tenants owe the landlord **\$120.00**.

The landlord is further seeking to recover the late payment charge of \$25.00 as set out in the tenancy agreement. As rent has not been paid for the three months, I find the landlord is entitled to recover late fees the amount of **\$75.00**.

I find that the landlord have established a total monetary claim of **\$9,505.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I find it appropriate to offset the landlord's monetary award. I order that the landlord retain the security deposit of **\$1,750.00** and pet damage deposit of **\$1,750.00** and interest of **\$33.33** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$5,971.67**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application is dismissed. The landlord is granted an order of possession and a monetary order as outlined 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: June 27, 2023

Residential Tenancy Branch