



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant **CNR, CNC, MNDCT, DRI-ARI-C, PSF, LRE, LAT, RPP, OLC**
Landlord **OPR-DR, OPC, MNR-DR, FFL**

Introduction

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

The landlords' application filed on April 29, 2023, is seeking orders as follows:

1. For an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued on April 18, 2023;
2. For an order of possession based on a One Month Notice to End Tenancy for Cause, (One Month Notice") issued on April 1, 2023;
3. For a monetary order for unpaid rent; and
4. To recover the cost of filing the application.

The tenants' application filed on April 10, 2023, the date payment of their application. The tenants are seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on April 1, 2023;
2. To cancel the One Month Notice;
3. To dispute an additional rent increase for capital expenditures
4. To have the landlord provided services or facilities required by the tenancy agreement;
5. To suspend or set conditions on the landlord's right to enter the rental unit;
6. To be allowed to change the locks to the rental unit;
7. To return my personal property; and

8. To have the landlord comply with the Act.

Both parties appeared, gave 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.

The tenant confirmed at the hearing that they did not serve the landlord with their application or any evidence. The landlord confirmed they received a curtesy copy of the documents from the Residential Tenancy Branch. I find I must dismiss the tenants' application without leave to reapply as they were required to serve the landlords with their application and submit evidence in accordance with the Act, and Rules of Procedures.

The landlord's agent testified that the tenants were both served with their application and notice of hearing by registered mail, sent on May 5, 2023. The agent stated that the packages were returned unclaimed. Filed in evidence are copies of the Canada Post tracking numbers. I find the tenants were deemed served five days later on May 10, 2023.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to an order of possession?

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

Background and Evidence

The tenancy agreement shows the tenancy began on August 15, 2021. Rent in the amount of \$2,450.00 was payable on the first of each month. A security deposit of \$1,225.00 was paid by the tenants. The tenants received a notice of rent increase, which increased the rent by \$50.00 to the amount of \$2,500.00; however, the maximum permitted was \$49.00. A rent increase cannot be rounded up and therefore invalid. I find rent in the amount of \$2,450.00 is payable. The landlord indicated that the tenants have paid the rent increase since December 1, 2022.

The landlord's agent testified that the tenants were served with a notice to end tenancy for unpaid rent on April 1, 2023; however, it was defective, and they re-issued the 10 Day Notice on April 18, 2023, by posting to the door of the rental unit.

The landlord's agent testified that the rent was not paid within 5 days.

The landlord testified that on May 17, 2023, the tenants gave them \$2,800.00 and the tenants were issued 2 receipts. One receipt was for outstanding utilities and the other receipt was for partial payment of April 2023 rent in the amount of \$1,572.00.

The landlord testified that on June 4, 2023, the tenants gave them \$2,800.00 and the tenants were issued multiple receipts. One receipt was for the balance of \$928.00 for the April 2023 rent. And another receipt was issued in the amount of \$1,670.46 for part payment of rent for May 2023. Both receipts for rent show they were issued for occupancy use only.

The landlord testified that the tenants have not paid any rent for June 2023.

The tenant confirmed that they paid \$2,800 on May 17, 2023, for unpaid rent for April 2023 and utilities, and another \$2,800.00 to the landlord on June 4, 2023. The tenant stated that the landlord never issued separate receipts for utilities and rent before.

The tenant acknowledge rent for June 2023 was not paid and they have informed the landlord that they would be vacated the premises at the end of June 2023. The tenant stated that in addition to the rent increase they received. They were also pay other rent increases.

Analysis

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

Section 26 of the Act states *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 of the Act states, *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 tenants had the right under the Act to deduct all or a portion from their rent, such as an order from an Arbitrator.

Even if the tenants had disputed the 10 Day Notice, their application would be dismissed because the tenant's own evidence they admitted that they did not pay the rent within 5 days of receiving the 10 Day Notice. Therefore, I find the Notice is valid.

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.

In this case, the landlords issued a rent increase over the allowable amount and the rent increase notice is invalid. The tenant did pay the landlord \$50.00 for December, January, February, March, and April 2023. Therefore, I find the tenant has a credit of \$250.00 to recover the illegal rent increase.

The tenant provided no supporting evidence of any other rent increase, which would be inconsistent as the rent increase given shows that the rent was \$2,450.00 at the time.

The evidence support that for May 2023 the landlord received \$1,670.46, leaving a balance of rent of \$779.54 at the rental rate of \$2,450.00. The evidence supports the tenants did not pay rent for June 2023, in the amount of \$2,450.00.

I find that the landlords are entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$3,229.54** less the credit of \$250.00 for a total of **\$2,979.54**.

I find that the landlords have established a total monetary claim of **\$3,079.54** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$1,225.00 and interest of \$11.39 security** deposit in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$1,843.15**. 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.

At the hearing the parties agreed that the landlord will attend the rental unit today between 6pm and 8pm to obtain a key to the rental unit as the tenants without the authority of the Act or landlord had changed the lock.

Conclusion

The tenants' application is dismissed without leave to reapply. The landlords are granted an order of possession and a monetary order as set out 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 23, 2023

Residential Tenancy Branch