



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant **CNR, MNDCT, RR, RP, PSF, FFT**

Landlord **OPU-DR, MNU-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 a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on
2. For a monetary order for unpaid rent;; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To dispute the Notice;
2. For compensation for monetary loss or other money owed;
3. To be allowed to reduce rent for repairs;
4. To have the landlord make repairs to the rental unit;
5. To have the landlord provide services or facilities required; and
6. 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.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the

tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice.

I find balance of the tenants' application not sufficiently related to be determined during these proceedings and they are only relevant should I allow the tenancy to continue, which must be determine first. I will, therefore, only consider whether the Notice is valid. The balance of the tenant's application is dismissed, with leave to re-apply only if the tenancy should continue.

As the landlord's application as it is directly to the tenant's request to cancel the Notice, and I must consider their claim, even if the landlord did not file an application pursuant to section 55 of the Act. The landlord's application will be fully considered.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

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

Should the Notice be cancelled?

Are the tenant's entitled to recover the cost of emergency repairs?

Is the landlord entitled to an order of possession and a monetary for repayment of rent?

Background and Evidence

The tenancy began on April 1, 2023. Rent in the amount of \$2,400.00 was payable on the first of each month. A security deposit of \$1,200.00 was paid by the tenants.

The tenant acknowledged that they received the Notice on May 3, 2023. The tenant acknowledged that they failed to pay of \$3,583.56; however, they did not fail to pay utilities in the amount of \$100.00 as they had not received a copy of the utility invoice. The tenant also acknowledged that they have not paid rent for June 2023.

The tenant submit in their application the reasons they are disputing the Notice.

We have not received a utility bill
Talked to landlord about the repairs we did the month before
Told him about not have access to the kitchen sink and washer and tub and proper use of the toilet

Analysis

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

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) 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.

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.

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 and they do not have the authority under the Act to withhold 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 tenants were not successful with their application the tenants are not entitled to recover the filing fee from the landlord.

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, 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.

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 **\$5,983.56**.

I find that the landlord has established a total monetary claim of **\$6,083.56** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,200.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$4,883.56**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants is cautioned** that costs of such enforcement are recoverable from the tenants.

The tenants are cautioned that should they establish a pattern of not paying rent in accordance with the Act, they could come to the attention of the Compliance and Enforcement Unit and be the subject of an investigation and could receive a daily penalty of up to \$5,000.00.

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 22, 2023

Residential Tenancy Branch