



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNRL-S, FFL, CNR-MT, FFT

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;
2. For a monetary order for unpaid rent;
3. To keep all or part of the security deposit; and
4. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To be allowed more time to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued on April 29, 2023; and
2. To recover the cost of filing the application.

Only the landlord's agent appeared gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

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?

Is the landlord entitled to an order of possession?

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

Is the landlord entitled to keep the security deposit?

Background and Evidence

The tenancy began on August 8, 2022. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$800.00 was paid by the tenants.

The tenants submit in their application that they received the Notice and the reasons for disputing the Notice are as follows:

Date notice was received: Apr 29, 2023

Notice delivery method: Attached to the door

Describe why you are disputing the notice and why you are filing late:

The landlord was receiving rent subsidy cheques for rent, but he said he hasn't received any yet.

The landlord's agent testified that the tenants were also served a subsequent notice to end tenancy for subsequent unpaid rent. The agent stated that the tenants did not pay the outstanding rent and have failed to pay any rent for May and June 2023.

The landlord provided a detail calculation of rent owed as follows:

Accounting of Unpaid Rent				
Rent Due Date	Rent Amount Owing	Date of Payment	Amount of Partial Payment(s)	Balance Owed
October 1, 2022	\$ 1,600.00	0	\$ 1,150.00	\$ 450.00
November 1, 2022	\$ 1,600.00	0	\$ 1,150.00	\$ 900.00
December 1, 2022	\$ 1,600.00	0	\$ 1,150.00	\$ 1,350.00
January 1, 2023	\$ 1,600.00	0	\$ 1,150.00	\$ 1,800.00
February 1, 2023	\$ 1,600.00	0	\$ 1,150.00	\$ 2,250.00
March 1, 2023	\$ 1,600.00	0	\$ 1,150.00	\$ 2,700.00
April 1, 2023	\$ 1,600.00	0	-	\$ 4,300.00
May 1, 2023	\$ 1,600.00	0	-	\$ 5,900.00
June 1, 2023	\$ 1,600.00	0	-	\$ 7,500.00
TOTAL	\$ 14,400.00		\$ 6,900.00	\$ 7,500.00

Analysis

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

In this case, I do not need to consider whether the tenants should be granted more time to dispute the Notice, as they filed their application within the statutory time limit.

Section 26 (1) 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.

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 have provided no proof their rent was paid. If the tenants believed that the landlord was entitled to a rent subsidy cheque, it was the tenants responsible to prove that it was received.

Further, the tenants have now stopped paying any rent to the landlord for May and June 2023. I find the tenants have breached section 26 of the Act and the Notice is valid.. Therefore, I dismiss the tenants' application without leave to reapply.

As the tenants was not successful with their application the tenant are not entitled to recover the filing fee from the landlords.

As the tenants' application is dismissed, I find the landlords are entitled to an order of possession and a monetary order for repayment of rent, pursuant to section 55 of the Act.

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 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 accept the landlord's agent testimony that the tenants have failed to pay rent in the total amount of \$7,500.00. The landlord has provided a detail calculation of rent owed. 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 **\$7,500.00**.

I find that the landlord has established a total monetary claim of **\$7,600.00** 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 **\$800.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$6,800.00**.

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 about lined 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 26, 2023

Residential Tenancy Branch