



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenants': CNR, CNOP, CNMN, MNDCT, DRI, RP, OLC, FFT
Landlord's: OPR, MNRL-S, 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;
3. To keep all or part of the security deposit; 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 (10 Day Notice) issued on May 5, 2023; and
2. To recover the cost of the filing fee.

On June 8, 2023, the tenants amended their application seeking orders as follows:

1. For a monetary order for monetary loss or other money owed;
2. To dispute a rent increase that is above the amount allowed by law;
3. To have the landlord make repairs to the rental unit;

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, 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 amended their application for other relief under the Act. I find the tenants' amended application is unrelated to the original dispute. Further, there has not been an illegal rent increase as the tenants rent has remained the same, except lowered from time to time by agreement. Therefore, I decline to consider the tenants' amended application. The tenants have liberty to reapply.

I will only consider the tenants request to set aside the Notice as requested in their original application. I must consider the landlord's application as it is related to the Notice and I must consider this issue under section 55 of the Act, even if they had not filed an application.

The landlord stated that they were not served with the tenants' application or any evidence. The tenant stated that it was sent to the pre-agreed email address of the landlord. The tenant was allowed to submit a copy of the email after the hearing, which I did receive. The email shows the landlord was sent an email on May 14, 2023, at 10:33 PM. It does not support any evidence was sent in the email as the tenants simply forwarded the documents they received from the Residential Tenancy Branch to the landlord.

The tenant confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The landlord indicated they did not receive any evidence form the tenant. However, I will only consider the tenants' relevant emails filed in evidence as these are emails between the parties. I find this not prejudicial to the landlord.

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.

Background and Evidence

The tenancy began on September 10, 2022. Rent in the amount of \$2,200.00 was payable on the first of each month. The tenants paid prorated rent for September 2022.

A security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00 were paid by the tenants (the Deposits).

The parties agreed that the tenants received the Notice on May 5, 2023. The tenant stated that they were given a rent reduction of \$1,577.00 for May 2023 by the landlord. The tenant stated they did pay the amount of \$623.00 to the landlord on May 5, 2023, by the deadline given by the landlord.

The landlord testified that they were in negotiations with the tenants for a rent reduction, which all the offers were given based on the tenants signing the Release Letter by May 5, 2023. The landlord stated that the tenants denied the first monetary offer on April 27, 2023. The tenants denied the second monetary offer made on May 2, 2023, and they made one final offer on May 4, 2023, which the tenants were to respond by the end of the day if the offer was accepted.

Filed in evidence of both parties are multiple emails on this issue.

The tenant responded that they did sign the release before the deadline as it was sent at the same time as the rent payment..

In the tenant's evidence are email exchanges between the landlord and the tenant SR dated May 8, 2023.

The tenant SR writes,

I had my lawyer review it and she said we are ok to sign it, as a contract doesn't over ride tenancy laws. if we get you this tonight, would the 10 day notice be retracted?

The landlord responses,

Our offer was clear. The deadline was Friday at noon.

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.

46 (1) 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 or written permission of the landlord.

I have reviewed the evidence of the parties as a whole. Specifically, the email thread which both parties only provided in pieces regarding the rent reduction. The Release Letter was subject to the negotiations and only the amounts changed. The first two monetary offers given by the landlord were rejected by the tenants. The tenants were also informed in the email thread that they were expected to sign the Release Letter or pay the full amount of rent.

On May 4, 2023, the landlord gave the tenants until the end of the day to accept the final offer of \$1,577.00. The email thread shows that the final deadline was for May 5, 2023. The tenants did provide a copy of the Release Letter, which sets out the terms of the monetary agreement of May 4, 2023, which I note is not signed.

While the tenants did send the landlord the amount of \$623.00 on May 5, 2023, that was not the full amount of rent, and the Release Letter was not signed or returned by the deadline. The landlord then issued the 10 Day Notice for the balance due of \$1,577.00.

I accept the evidence of the landlord that the tenant's were only entitled to the rent reduction if they agreed to the terms in the Release Letter by the deadline. This is clear thought out the email thread. I have no evidence that the tenants responded by the end of the day of May 4, 2023, agreeing to the terms of the rent reduction. Nor did the tenants meet the deadline of May 5, 2023, for returning the signed Release Letter, which clearly the tenants had in their possession.

The tenant's evidence was that the Release Letter was signed and sent back when they paid the rent of \$623.00 on May 5, 2023. That is not supported by the email messages of May 8, 2023, as the tenant SR asked the landlord if they would retract the 10 Day Notice, if they now signed the document, which the landlord stated, "the offer was clear, the deadline has past".

While I accept the tenants had the right to have the Release Letter reviewed by a lawyer; however, they were required to pay rent in full. As the tenants had not agreed to the terms for the rent reduction by the deadline given of May 5, 2023, as there email is dated May 8, 2023. .

Further, the tenants could have simply paid the outstanding rent, as they had until May 10, 2023, to pay the outstanding rent, because the rent would have been paid within 5 days, which they did not do. Then pursue other avenues which was also noted in the email thread, which they did. This was only by done by amending their application on June 8, 2023, for monetary compensation, which was not considered for the reasons noted above.

Based on the above, I find the tenants did not accept the terms of the rent reduction offered by the landlord as the Release Letter was not signed and returned by the deadline of May 5, 2023. I find the tenants failed to pay rent in the amount of \$1,577.00. I find the 10 Day Notice is valid. Therefore, I dismiss the tenants' application to cancel the Notice.

As the tenants' application is dismissed, I find the landlord is 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 landlord is 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 landlord is entitled to monetary order for the unpaid rent, pursuant to section 55(1.1) of the Act in the amount of **\$1,577.00**.

I find that the landlord has established a total monetary claim of **\$1,677.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the amount of \$1,677.00 from the Deposits in full satisfaction of the claim. This will leave a balance of the Deposits of \$523.00.

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 in the above terms.

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: July 7, 2023

Residential Tenancy Branch