



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenants' application – CNR, MNDCT, PSF
Landlords' application – OPR-DR, FFL

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act;
- a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement under section 67 of the Act; and,
- an order requiring the landlord to provide services or facilities required by the tenancy agreement or law.

The Landlord filed a cross-application for dispute resolution requesting an Order of Possession and a Monetary Order for unpaid rent based upon the 10 Day Notice to End Tenancy issued June 2, 2023; and, reimbursement from the Tenants for the filing fee.

The parties testified that each had received the respective dispute resolution package and evidence from the other party prior to the hearing. The Tenants submitted proof of service on each Landlord for the dispute resolution package and evidence, with copies of the Canada Post receipt with tracking number for registered mail. The Landlord provided proof of service for personal service for each Tenant of the dispute resolution package and evidence.

Issues to be Decided

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to an order for compensation for damage or loss under the Act, regulation or tenancy agreement?

Are the Tenants entitled to an order requiring the Landlord provide services or facilities required by the tenancy agreement or law?

Is the Landlord entitled to reimbursement of the filing fee from the Tenants?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on September 1, 2022 on a month-to-month basis. The monthly rent of \$3,200.00 was due on first day of the month, with a security deposit in the amount of \$1,600.00. The Landlord testified that they continues to hold the security deposit in trust.

The Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on June 2, 2023 with an effective date of June 12, 2023 for unpaid rent in the amount of \$600.00 due May 1, 2023; and, unpaid rent in the amount of \$3,200.00 due June 1, 2023. The 10 Day Notice was personally served on the Tenants on June 2, 2023 and the Tenants timely applied for dispute resolution.

The Landlord testified that the Tenants had not paid rent for July and August, 2023. The Tenant K.K. testified that they had moved out of the rental unit on August 15, 2023 and had returned the keys to the Landlord. The Landlord stated they had received the keys to the rental unit prior to the hearing on August 22, 2023.

The Tenant K.K. testified that they wished to withdraw their application to cancel the 10 Day Notice because they had moved out. The Tenant K.K. testified that they owed \$600.00 for May 2023 rent, and had not paid rent for June, July and August, 2023.

The Landlord requested that the security deposit not be set-off against the unpaid rent.

Analysis

Should the Landlord's 10 Day Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 46 of the Act states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant(s) do not pay the arrears or dispute the 10

Day Notice they are conclusively presumed to have accepted the end of the tenancy under section 46(5).

Based upon the undisputed testimony of both the Tenant K.K. and the Landlord, I find the Tenants failed to pay rent within the time permitted under the Notice after being served with the Notice.

For this reason, the Tenants' application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 46 and 55 of the Act issued June 2, 2023 is dismissed, without leave to reapply.

Section 55(1.1) of the Act provides that if a tenant makes an application for dispute resolution of a notice to end tenancy for unpaid rent under section 46, and the landlord's notice complies with section 52 of the Act, and the tenant's application is dismissed or the landlord's notice is upheld, then the director must grant an order for unpaid rent.

I find that the Landlord's 10 Day Notice to End Tenancy issued June 2, 2023 complies with section 52 of the Act, and that based upon the undisputed testimony of the parties and evidence submitted, that there is unpaid rent from the Tenants in the amount of \$10,200.00.

I find that the Landlord is in possession of the rental unit and that an Order of Possession is not necessary.

The Tenants' Remaining Claims

Having vacated the rental unit, and as the tenancy is at an end, the Tenants' remaining claims are not at issue. I make no findings on the remaining claims made by the Tenants.

Is the Landlord entitled to reimbursement of the filing fee from the Tenants?

As the Landlord is the successful party in this matter, I find the Landlord is entitled to reimbursement of the filing fee from the Tenants under section 72 of the Act.

Conclusion

The Tenants' application is dismissed in its entirety, without leave to reapply.

I grant the Landlord a Monetary Order in the amount of **\$10,300.00** for unpaid rent and reimbursement of the filing fee.

The Landlord is provided with this Order on the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this

Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: August 23, 2023

Residential Tenancy Branch