



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened in response to applications by the landlord(s) and the tenant(s).

The landlord's application is seeking orders as follows:

1. For an order of possession for unpaid rent;
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 cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, (the "Two Month Notice") issued on May 31, 2023; and
2. 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 make submissions at the hearing.

As there are two different notices to end the tenancy and under different sections under the Act. I find it appropriate to deal with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") issued on July 24, 2023, first as this would be a breach of the Act if proven.

Issue(s) to be Decided

Is the landlord entitled to an order of possession based on the 10 Day Notice?

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

Should the Two Month Notice be cancelled?

Background and Evidence

The tenancy began on October 1, 2020. Rent in the amount of \$1,400.00 was payable on the first of each month. A security deposit of \$700.00 was paid by the tenants.

The landlord's agent testified that they served the tenants with the 10 Day Notice on July 24, 2023, which was sent by registered mail. A copy of the Canada Post tracking number was provided. The Canada post history show the item was successfully delivered and was accepted by someone on behalf of the tenants.

The landlord's agent testified that the 10 Day Notice was not disputed nor have the tenants paid the outstanding rent. The agent stated that the tenant only paid \$700 for July and \$700.00 for August 2023, which \$1,400.00 remains unpaid.

The tenant's agent testified that they were away on holidays; however, did receive a copy of the 10 Day Notice from a relative.

The tenant's agent testified that they only paid half the rent because they were away on a holiday and the previous year when they went away they only paid half the rent and they assumed that would continue to be applied when they would go away. The tenant's agent confirmed they did not have an agreement with the landlord before they went on this holiday that they would be entitled to pay half the rent.

Analysis

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

Based on the testimony of the landlord's agent, I find that the tenants were served with the 10 Day Notice on July 26, 2023, by registered mail. The Canada Post history shows that the tenants had someone sign for the package, which was likely the relative they said they received it from. The Notice informed the tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the tenants had five days to dispute the Notice.

The tenants did not dispute the 10 Day Notice or pay the outstanding rent. Simply because the landlord was generous the previous year and gave the tenants relief in rent while the tenants were on holidays does not mean they were entitled to relief in rent for any subsequent holidays. I find this is an unreasonable assumption on the tenants' part

and the tenants should have asked the landlord before they withheld the rent. The tenants did not have the landlord's consent to pay only a portion of the rent.

The tenants have not paid the outstanding rent and did not apply to dispute the notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

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 the tenants breach the Act, when they failed to pay rent, I find the tenants owe the landlord \$1,400.00 in outstanding rent and \$100.00 for the cost of the filing fee for a total of **\$1,500.00**.

However, the landlord was agreeable if the tenants paid the outstanding rent of \$1,400.00 within 2 days of this hearing, September 28, 2023, and October 2023, rent of \$1,400.00 on October 1, 2023, they would not enforce the two-day order of possession until October 31, 2023. I find this to be a reasonable as this will give the tenants more time to find alternate housing.

As the tenancy has ended on the tenant's failure to pay rent, I find I do not need to consider the merits of the Two-Month Notice and because that notice to end tenancy never came in to effect as it was disputed. I find it reasonable to cancel the Two Month Notice and it has no force or effect. As I have found the tenant's breached the Act before their application was heard, I decline to award the cost of the filing fee to the tenants.

Conclusion

The tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession. Should the tenants fail to pay the outstanding rent of \$1,400.00 and/or rent for October 2023, the landlord is entitled to enforce the order of possession. Should the rent be paid as indicated the tenants must

vacate the rental unit no later than October 31, 2023. The landlord must not enforce the order of possession until October 31, 2023, if rent has been paid.

The Two Month Notice is cancelled as I have ended the tenancy under section 46 of the Act .

The landlord is granted a monetary order for the unpaid rent and filing fee of \$1,500.00, this does not include rent for October 2023, as it is not due. If this the tenants pay the outstanding rent that will automatically cancel the monetary order because the landlord is authorized to keep the balance due of \$100.00 from the tenants' security deposit.

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: September 28, 2023

Residential Tenancy Branch