



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The “Act”) in response to cross applications from the parties.

The Tenants filed their application on September 14, 2023, and seek the following:

- Cancellation of the Landlord’s 10 Day Notice for Unpaid Rent (the Notice).
- Compensation for their monetary loss or other money owed from the Landlord.
- Authorization to recover their filing fee from the Landlord.

The Landlord filed their application on September 27, 2023, and seeks the following:

- An order of possession pursuant to the Notice.
- A monetary order for unpaid rent.
- Authorization to recover their filing fee from the Tenants.

Both parties acknowledged being served with their counterparty’s application by registered mail, in accordance with the *Act*. However, the tenant J.C.P. acknowledged not serving the Landlord with a copy of their handwritten statements, which were served to the Residential Tenancy Branch on September 14, 2023. I informed J.C.P. that I will be excluding the handwritten statement from my decision, due to ineffective service to Landlord, but that they are welcome to read their statement to me or to testify to its contents. J.C.P. agreed and acknowledged service of the Landlord’s evidence.

Background and Evidence

The parties agreed that this tenancy began on March 1, 2022, pursuant to a written tenancy agreement, which was signed by the Tenants on March 7, 2022, and by the Landlord on March 9, 2023 (the Tenancy Agreement).

The parties further agreed that the current rent, which is due on the first of every month, is \$1,106.00 and that the Landlord is holding a security deposit of \$537.50 and a pet damage deposit of \$250.00 in trust for the Tenants.

Unpaid Rent

The Landlord testified that the Tenants did not pay their September and October 2023 rent until October 25, 2023, at which time another agent of the Landlord issued a use and occupancy only receipt to the tenant J.C.P. A copy of the use and occupancy receipt was not submitted as evidence by either party. The Landlord issued the Tenants with the Notice, dated September 8, 2023, by attaching the same on the Rental Unit's door. J.C.P. testified that they discovered the Notice the next day, on September 9, 2023.

Tenant J.C.P. provided undisputed testimony that they paid their September 2023 rent on October 6, 2023, because they found a copy of the bank draft that they used to pay their September 2023 rent, made payable to the Landlord on October 6, 2023. J.C.P. testified that they paid their October 2023 rent on October 25, 2023.

I asked J.C.P. to read the contents of the receipts provided to the Tenants by the Landlord after J.C.P. paid their September and October 2023 rent. J.C.P. read the contents of their September 2023 rent receipt which stated that the Landlord is accepting payment for use and occupancy only.

J.C.P. testified that when they paid their rent on October 25, 2023, they believed the Landlord was understanding of their situation.

Tenants' Monetary Loss Claim

J.C.P. testified that since the start of the tenancy, the Tenants have owned two cars. Pursuant to the Tenancy Agreement, the tenants have exclusive use of parking number 73. However, J.C.P. testified they have been parking their second vehicle in parking number 11, with full knowledge and permission from the tenant that has exclusive use of parking number 11 (the Other Tenant).

J.C.P. further testified that in or around the end of August 2023, they were informed by the Other Tenant that the Landlord had sent them a demand for the removal of the Tenants' second vehicle.

The Landlord testified that parking number 11 was not assigned to the Tenants and that residents in the building are not allowed to assign their parking spots to anyone else, which is why they asked the Other Tenant to have the Tenants' vehicle removed after they discovered the infringement during an August 2023 audit.

J.C.P. testified that the Tenants are seeking the recovery of their \$200.00 towing costs and their \$300.00 storage fee costs for their second vehicle, after they were forced to

tow away their second vehicle from parking number 11 to a storage facility away from the Rental Unit's parking facility.

Analysis

Unpaid Rent

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

In this case, the Tenants agree that they owe rent and did not cite any valid reason under the *Act* for why rent was withheld.

Section 46 of the *Act* states that a landlord may issue a 10 Day Notice to End a Tenancy if rent remains unpaid after the day rent is due. The parties agree that the Tenants' September and October rent was not paid on time. As such, the Landlord had a valid reason to issue the Notice. Section 46(4) of the *Act* allows a tenant to cancel a notice by paying the outstanding rent within five days of receiving the Notice. The Tenants did not pay their September 2023 rent until October 6, 2023.

Based on the evidence before me, I find that the tenancy was not re-instated by the Landlord's acceptance of late rent payment. The Landlord issued a use and occupancy only receipt to the Tenants indicating their intention to act on the Notice and to seek an order of possession.

I have reviewed the Notice and find that it complies with the form and content requirements of section 52 of the *Act*.

For these reasons, I find that the Notice is valid. I dismiss the Tenants' application to cancel the Notice, without leave to reapply. As such, per section 55 of the *Act*, the Landlord is entitled to an order of possession. During the hearing, the Landlord agreed to an effective date of November 30, 2023.

Tenants' Monetary Loss Claim

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the *Act*. When a party makes a claim for compensation, they must prove the following on a balance of probabilities:

1. a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;

3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The parties agreed that the Tenancy Agreement only provides the Tenants with one parking spot, not two.

Based on the evidence before me, I cannot find the Landlord in contravention of the *Act* or of the Tenancy Agreement in relation to the Tenants. The Landlord asked the Other Tenant to remove a vehicle from a parking spot that was assigned to the Other Tenant. The Landlord did take away the Tenants' one and only assigned parking spot. The Landlord was also not aware that the Tenants were using parking number 11 until in or around August 2023 and there is no evidence before me that would suggest the Tenants and the Landlord ever had an agreement regarding parking 11. Therefore, I dismiss the Tenants' application for damages, without leave to reapply.

As the Landlord was successful with their Application, I grant them their \$100.00 filing fee in accordance with section 72 of the *Act*. I dismiss the Tenants' application for the recovery of their filing fee because they were unsuccessful and because they did not pay a filing fee (they had a fee waiver from the RTB).

Conclusion

The Landlord is granted an Order of Possession, effective November 30, 2023, after service of the attached Order to the Tenants. The Landlord is granted a monetary for \$100.00 for their filing fee. In full satisfaction of this Order, the Landlord is further ordered to withhold \$100.00 from the Tenant's 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: October 30, 2023

Residential Tenancy Branch