



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Tenant's file ending in #775: CNL, FFT
Tenant's file ending in #506: CNR, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear cross applications.

The tenant's August 8, 2023 application pursuant to the Act is for:

- Cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Two Month Notice), issued pursuant to section 49;
- An authorization to recover the filing fee for this application, under section 72.

The tenant's November 7, 2023 application pursuant to the Act is for:

- Cancellation of a 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) pursuant to section 46;
- An authorization to recover the filing fee for this application, under section 72.

Issue(s) to be Decided

Should the 10 Day Notice and/or the Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession and/or a Monetary Order for unpaid rent?

Is the tenant entitled to recover any filing fee(s) from the landlord?

Service of the Notice of Dispute Resolution Proceeding (Proceeding Package) and the Evidence

The landlord acknowledged receiving the proceeding package and is duly served in accordance with the Act.

Both parties acknowledged service of the evidence and are duly served in accordance with the Act.

Background and Evidence

Both parties agreed that this tenancy began on October 1, 2016, with a monthly rent of \$1,000.00 due on the first day of each month. A security deposit in the amount of \$500.00 was paid on October 1, 2016. The current rent is \$1,274.65.

Both parties confirmed that a Two Month Notice was issued by the landlord on July 31, 2023, which indicated an effective date of September 30, 2023.

The tenant filed a dispute regarding the Two Month Notice on August 8, 2023. However, around October 2023, the tenants decided to accept the Two Month Notice. The landlord did not acknowledge or agree to the withdrawal of the dispute, although the tenants communicated this intent with the landlord. Despite the lack of acknowledgement from the landlord, the tenants ceased to pay rent in November 2023. To the tenant's understanding, this was the one month of compensation in relation to the Two Month Notice. The tenant confirmed that they have not paid November 2023 rent.

As November 2023 rent was unpaid, the landlord issued a 10 Day Notice on November 2, 2023, which indicated an effective date of November 15, 2023, and listed \$1,274.65 in unpaid rent – equal to one month.

Both parties acknowledge that the tenants moved out on November 23, 2023.

Analysis

Should the 10 Day Notice and/or the Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession and/or a Monetary Order for unpaid rent?

As I had explained in the hearing, in absence of an acknowledgement from the landlord regarding withdrawal of the Two Month Notice dispute and the tenant's acceptance of the Two Month Notice, the dispute was still active, and the Two Month Notice was not in effect. The tenant should have continued paying rent until the Two Month Notice dispute was heard, or until the landlord acknowledged the withdrawal of the dispute.

The tenant did not have a lawful reason for withholding November 2023 rent. The tenant has also confirmed that, as of the date of this hearing, they have not paid the rent indicated on the 10 Day Notice. Therefore, the 10 Day Notice is valid – which renders the Two Month Notice moot and of no effect.

As per section 68 of the Act, and as discussed at the hearing, I amend the effective date of the 10 Day Notice to November 23, 2023, which was the day that the tenants vacated the rental unit; this is the date that the tenancy ended.

Accordingly, the landlord is entitled to a Monetary Order for unpaid rent as per section 55 of the Act.

Is the tenant entitled to recover any filing fee(s) from the landlord?

As the tenant was not successful in both applications, the tenant's applications for authorization to recover the filing fees from the landlord under section 72 of the Act are dismissed, without leave to reapply.

Conclusion

The Two Month Notice is cancelled and of no effect.

The tenancy ended on November 23, 2023, because of the 10 Day Notice.

I grant the landlord a Monetary Order in the amount of **\$1,274.65** for unpaid rent.

The landlord is provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant 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: December 05, 2023