



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, CNMN, OLC, FFT

Introduction

The hearing occurred by conference call based on joined Applications for Dispute Resolution (Application) filed by Tenant T.O. on January 24, 2024, and by Tenant O.A.A. on January 24, 2024.

The Tenants both applied for:

- cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act
- an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Issue(s) to be Decided

1. Are the Tenants entitled to cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act?
2. Are the Tenants entitled to an order requiring the Landlord to comply with the Act, regulation or tenancy agreement under section 62 of the Act?
3. Are the Tenants entitled to an authorization to recover the filing fee for this application from the Landlord under section 72 of the Act?

Background and Evidence

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

Evidence and testimony provided by both parties indicates that the tenancy began on October 1, 2023, with a monthly rent of \$3,300.00 due on the first of each month. A security deposit of \$1,650.00 was paid.

According to the Landlord, a 10 Day Notice was served on the Tenants in person on January 21, 2024, for unpaid rent in the amount of \$1,100.00. A copy of the notice was submitted as evidence in support of the Landlord's testimony.

The Landlord testified that he had rented out the unit to Tenant's T.O., O.A.A. and a third tenant named N.B. He further testified that tenant N.B. moved out of the rental unit on January 1, 2024, and that he reimbursed him \$550.00 for his share of the security deposit. He stated that Tenant N.B. said he'd try and help find another tenant to replace him.

The Landlord testified that on January 1, 2024, he received \$1,100.00 from Tenant T.O. and \$1,100.00 from Tenant O.A.A. He testified that he contacted the Tenants and requested the balance of \$1,100.00 for January's rent and advised them that they were responsible for the full month's rent as they had rented the unit as co-tenants on a single agreement rather than on an individual tenancy basis. A copy of the rental ad was submitted by the Landlord as evidence.

According to both Tenants, each tenant in the unit was responsible for \$1,100.00 of the monthly rent and therefore they paid their share of the rent in full and on time and are not responsible for paying anymore than their portion of the January 2024 rent. The Tenants testified that they believed they were renting the unit on a room-by-room basis. Tenant O.A.A. testified that tenant N.B. advised them in November 2023 that he would be moving out of the rental unit.

Analysis

Are the Tenants entitled to a cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent?

Under section 46(4) of the *Act*, a tenant who receives a notice for unpaid rent must do one of the following within 5 days of receipt of the notice:

- pay the overdue rent, in which case the notice has no effect, or
- dispute the notice by making an application for dispute resolution.

The Tenant's application for dispute resolution on December 12, 2023, is in compliance with the 5-day requirements under section 46(4) of the *Act*.

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*.

I find, based on the evidence submitted, the testimony provided that the Tenants did not pay their January 2024 rent in full and therefore the 10 Day Notice was valid.

I find that as co-tenants to a single tenancy agreement, the Tenants were obligated to pay the entire rent due for the property in which they resided each month in full and on time and that the departure of one of the co-tenants from the rental unit did not relieve them of their obligation to pay. I further find that if the Tenants wished to keep paying the same amount as they had previously paid each month, it was incumbent upon them, the party who was renting the unit, and not the Landlord, to seek out and secure a new roommate to replace the one who was leaving.

For the above reason, the Tenant's application for cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under section 46 of the *Act* is dismissed, without leave to reapply.

Are the Tenants entitled to an order for the Landlord to comply with the *Act*, regulation and/or the tenancy agreement?

This issue was not adjudicated. As the Tenants have been unsuccessful in their applications to cancel the 10 Day Notice, this issue is not longer relevant.

The Tenants' applications for an order for the Landlord to comply with the *Act*, regulation and/or the tenancy agreement is dismissed without leave to reapply.

Is the Landlord entitled to a Monetary Order for 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*.

Based on the evidence submitted and the testimony of both parties, I find that the Landlord has substantiated their claim for unpaid rent for January 2024.

Based on the above, I hereby grant the Landlord a monetary award in the amount of \$1,100.00 for unpaid rent under section 55(4)(b) of the Act. I order the Landlord to retain \$1,100.00 of the Tenants' security deposit in full satisfaction of the monetary award under section 38(4) of the Act.

I order the Landlord to pay the Tenants the balance of their security deposit, including interest, in the amount of \$10.28.

Are the Tenants entitled to recover their \$100.00 filing fees?

As the Tenants were not successful in their applications, I find that the Tenants are not entitled to recover their \$100.00 filing fees paid for these applications under section 72 of the Act.

Conclusion

The Tenants' applications 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 are dismissed, without leave to reapply.

The Tenants' applications for an order for the Landlord to comply with the Act, regulation and/or the tenancy agreement are dismissed, without leave to reapply.

The Tenants' applications for authorization to recover the filing fees for these applications from the Landlord under section 72 of the Act are dismissed without leave to reapply.

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: February 29, 2024

Residential Tenancy Branch