



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MOUNT WASHINGTON HOSTEL and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

FFL OPC OPM OPR OPRM-DR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover its filing fee for this application from the tenants pursuant to section 72;

This hearing was reconvened from a hearing set February 21, 2019. In the interim decision following that hearing, I permitted the tenants additional time to upload documents in support of their application. As of the start of this application, the tenants failed to upload any documents to the Residential Tenancy Branch system, or to serve any documents in support of their response on the landlord.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 am. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord's agent testified that the tenants were personally served the notice of dispute resolution form and evidence on January 22, 2019. At the February 21, 2019 hearing, the tenants confirmed receipt of the notice of dispute resolution package. I find that the tenants were served with this package on February 22, 2019, in accordance with section 89 of the Act.

The tenants were sent copies of the interim decision and the Notice of Reconvened Hearing to the Residential Tenancy Branch, to the emails they provided at the February 21, 2019 hearing.

Preliminary Issue – Amendment of Landlord's Claim

At the hearing, the landlord sought to further amend his application to include a claim for February and March 2019 rent, portions of which he testified remains outstanding.

The landlord's agent testified that since the landlord filed this application for dispute resolution, the tenants failed to pay 50% of each of February and March's monthly rent (\$500.00 total). He testified that they did pay all of April 2019's month rent.

Section 4.2 of the Rules states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case the landlord is seeking compensation for unpaid rent that has increased since it first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of

Issue(s) to be Decided

Is the landlord entitled to:

- 1) an order of possession?
- 2) a monetary order in the amount of \$2,250.00 for unpaid rent?
- 3) recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a month to month tenancy agreement starting February 19 2018. Monthly rent is \$500.00 and is payable on the first of each month. The tenants paid the landlord a security deposit of \$250.00. The landlord still retains this deposit.

The landlord's agent testified that the tenants were personally served with the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**"), dated November 28, 2018 on the same date.

The Notice indicates an effective move-out date of December 11, 2018. The grounds to end the tenancy cited in the Notice were:

- 1) the tenant is repeated late paying rent;
- 2) the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- 3) the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;

The landlord entered a document entitled Rent Summary Sheet into evidence, which sets out the tenants' rent payment history since February, 2018. It reads:

Rent Due Date	Rent Period From	Rent Period to	Rent Amount Due	Rent Amount paid	Rent paid date	Arrears
23-Feb-18	23-Feb-18	28-Feb-18	\$107.14	\$107.14	28-Feb-18	\$0.00
01-Mar-18	01-Mar-18	31-Mar-18	\$500.00	\$200.00	01-Mar-18	\$300.00
				\$300.00	18-Mar-18	\$0.00
01-Apr-18	01-Apr-18	30-Apr-18	\$500.00	\$500.00	01-Apr-18	\$0.00
01-May-18	01-May-18	31-May-18	\$500.00	\$250.00	24-Apr-18	\$250.00
				\$250.00	10-May-18	\$0.00
01-Jun-18	01-Jun-18	30-Jun-18	\$500.00	\$500.00	14-Jun-18	\$0.00
01-Jul-18	01-Jul-18	31-Jul-18	\$500.00	\$250.00	23-Jun-18	\$250.00
01-Aug-18	01-Aug-18	31-Aug-18	\$500.00	\$250.00	05-Aug-18	\$500.00
01-Sep-18	01-Sep-18	30-Sep-18	\$500.00	\$250.00	22-Aug-18	\$750.00
01-Oct-18	01-Oct-18	31-Oct-18	\$500.00	\$250.00	26-Sep-18	\$1,000.00
01-Nov-18	01-Nov-18	30-Nov-18	\$500.00	\$250.00	24-Oct-18	\$1,250.00
01-Dec-18	01-Dec-18	31-Dec-18	\$500.00	\$250.00	11-Nov-18	\$1,500.00
01-Jan-19	01-Jan-19	31-Jan-19	\$500.00	\$250.00	19-Dec-18	\$1,750.00
01-Feb-19	01-Feb-19	28-Feb-19	\$500.00	\$250.00	20-Jan-19	\$2,000.00
01-Mar-19	01-Mar-19	31-Mar-19	\$500.00	\$250.00	20-Feb-19	\$2,250.00
					Total	\$2,250.00

The landlord's agent testified that this amount remains outstanding.

At the February 21, 2019 hearing, the tenants testified that they had, that same day, just obtained documents from the ministry (they did not say which one) that would show that they did not owe the amount claimed by the landlord. I adjourned the hearing to allow the tenants an opportunity to provide these documents to the Residential Tenancy Branch and the landlord. They did not do this.

Analysis

Sections 47(4) and (5) of the Act state:

(4)A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5)If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

- (a)is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b)must vacate the rental unit by that date.

Based on the landlord's agent's testimony and the Notice before me, I find that the tenants were served with an effective notice. Although the tenants participated in the February 21, 2019 hearing, the tenants did not file an application to dispute the notice within 10 days. Therefore the tenants are conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the notice (December 28, 2019), and must move out of the unit. As this has not occurred, I find that the landlord is entitled to an order of possession effective 1:00 pm on April 30, 2019 (as the tenants have paid monthly rent for April 2019 in full), pursuant to section 55 of the Act.

I accept the landlord's evidence that the tenants are in rental arrears in the amount of \$2,250.00. The tenants were provided with an opportunity to submit documentary evidence in support of their claim that this amount was not owed, but failed to do so (or indeed even attend the reconvened hearing to provide an explanation as to why this might be). Accordingly, I find that the tenants must pay the landlord \$2,250.00, representing rental arrears from July 1, 2018 to March 1, 2019.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application.

In accordance with the offsetting provisions of section 72 of the Act, I allow the landlord to retain the entire security deposit (\$250.00) in partial satisfaction of the monetary award.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord \$2,100.00, as follows:

Rental Arrears (July 2018 to March 2019)	\$2,250.00
Filing Fee	\$100.00
Credit for Security Deposit	-\$250.00
Total	\$2,100.00

Pursuant to section 55 of the Act, I grant an order of possession to the landlord effective 1:00pm on April 30, 2019.

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: April 10, 2019

Residential Tenancy Branch