



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, MNDCL, FFL

Introduction

This hearing originated as a Direct Request proceeding which was adjourned to today's participatory hearing in an Interim Decision dated March 1, 2019. This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord, the landlord's counsel and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Counsel for the landlord submitted that the Notice of Reconvened Hearing and Interim Decision were left in the tenant's mailbox on March 3, 2019. The tenant confirmed receipt of the above on or around that date.

The March 1, 2019 Interim Decision stated:

***Notices of Reconvened Hearing are enclosed with this interim decision.
The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 89 of the Act.***

Section 89(1) of the *Act* states:

89 (1)An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a)by leaving a copy with the person;
- (b)if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c)by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d)if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e)as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Posting the Notice of Reconvened Hearing and Interim Decision on the tenant's door is not an approved method of service under section 89 of the *Act*. However, as the tenant confirmed receipt of the Notice of Reconvened Hearing and Interim Decision, I find that the tenant was sufficiently served for the purposes of this *Act*, with the above documents, pursuant to section 71 of the *Act*.

Counsel for the landlord submitted that the landlord's amendment was posted on the tenant's door on March 28, 2019. The tenant confirmed receipt of the landlord's amendment on March 29, 2019. I find that the landlord's amendment was served on the tenant in accordance with section 88 of the *Act*.

Preliminary Issue- Adjournment

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure states that either the applicant or the respondent or their agent may request at the hearing that it be adjourned.

Rule 7.9 (Criteria for granting an adjournment) establishes the criteria the director will consider when determining a request for an adjournment. Considerations for a request to adjourn include:

- the likelihood of the adjournment resulting in a resolution;

- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

At the end of this hearing the tenant testified that he wished to have an adjournment. The tenant testified that he was not able to prepare for this hearing due to his son's surgeries. The tenant did not enter any documentary evidence to substantiate this claim.

I find that the tenant did not prove on a balance of probabilities that the need for the adjournment arose due to his son's surgeries rather than his intentional action or neglect. I therefore dismiss the tenant's request for an adjournment.

Preliminary Issue- Withdrawal

Counsel for the landlord testified that the tenant moved out mid-March 2019 and so the landlord is withdrawing his claim for an Order of Possession. The tenant agreed that he moved out of the subject rental property mid- March 2019.

Based on the above, I dismiss the landlord's claim for an Order of Possession.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on January 1, 2018 and ended mid-March 2019. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,100.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement states that water, sewage and garbage are not included in rent.

Counsel for the landlord submitted that the tenant did not pay rent for February or March 2019 and that the landlord is seeking a monetary order from the tenant in the amount of \$4,200.00. The tenant testified that he did not pay rent for February or March 2019. The tenant testified that the landlord did not give him access to the subject rental property until January 10, 2018, instead of January 1, 2018 as set out in the tenancy agreement. The tenant testified that he believes he does not owe rent for the first 10 days of February due to the landlord failing to give him access to the subject rental property for 10 days at the beginning of the tenancy.

The landlord entered into evidence a water, sewage and garbage invoice (the "utility invoice") in the amount of \$1,630.25 with a billing period from June 15, 2018 to November 1, 2018. Counsel for the landlord submitted that the landlord agreed to pay 1/3 of the utility invoice and is seeking 2/3 of the utility invoice, in the amount of \$1,086.33, from the tenant. The utility invoice shows that \$921.65 of the invoice is from a previous bill, leaving \$708.60 from the June 15- November 1, 2018 billing period.

The tenant testified that prior to this dispute the landlord did not ask him to pay for the utilities.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. I find that the

tenant was obligated to pay the monthly rent in the amount of \$2,100.00 on the first day of each month for February and March 2019 which he failed to do. Pursuant to section 67 of the *Act*, I find that the tenant owes the landlord \$4,200.00 in unpaid rent.

As noted above, the tenant's obligation to pay rent is not altered if the landlord breaches the *Act*. If the landlord breached the tenancy agreement in January of 2018, a point on which I make no finding, the tenant would still be obliged to pay rent on time and in full for February and March 2019.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find that the tenancy agreement clearly states that water, garbage and sewage are not included in the rent. The tenant testified that he signed the tenancy agreement. I find that the tenant is obligated to pay for water, garbage and sewage. I accept the landlord's testimony that he agreed to pay 1/3 of the utility invoices.

I find that the landlord has properly quantified his loss from June 15, 2018 to November 1, 2018 by submitting into evidence the utility invoice for the above period. I find that the landlord has not properly quantified his loss for a previous period as no earlier invoices were submitted into evidence. I find that the landlord is entitled to recover from the tenant 2/3 of the utility invoice from June 15 to November 1, 2018 but is not entitled to recover the previous bill amount. 2/3 of the June 15- November 1, 2018 utility usage is \$472.40.

While counsel for the landlord submitted that the previous bill amount is likely the five to six months prior to the utility invoice submitted into evidence, I find that without the actual invoice it is not possible to determine if a portion of the previous bill amount is from a time period outside of when the tenant resided at the subject rental property. Therefore, the landlord's claim for the previous bill amount is dismissed.

As the landlord was successful in his application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, in accordance with section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
February – March rent	\$4,200.00
Utility bill	\$472.40
Filing Fee	\$100.00
TOTAL	\$4,772.40

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: April 15, 2019

Residential Tenancy Branch