



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR MT FFT
Landlord: OPRM-DR FFL

Introduction

This hearing dealt with applications from both the tenant and the landlord pursuant to the *Residential Tenancy Act* (the *Act*).

The tenant applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) pursuant to section 46 of the *Act*;
- more time to apply to cancel a notice; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

The landlord applied for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55 of the *Act*;
- a Monetary Order for unpaid rent pursuant to section 67 of the *Act*; and
- recovery of the filing fee for this application from the tenant pursuant to section 72 of the *Act*.

The landlord attended at the date and time set for the hearing of this matter. The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of the tenant, who was an applicant in one of the applications being heard at this hearing, I order the tenant's application dismissed without liberty to reapply.

The landlord confirmed that he had served the Notice of Dispute Resolution Proceeding and evidence for his application to the tenant by Canada Post registered mail on April 20, 2019 and submitted a Canada Post registered mail receipt with a tracking number as proof of service. I have recorded the tracking number on the cover sheet of this decision.

As such, I find that the landlord served the notice of this hearing and his evidence in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Amendment of Landlord's Application

At the outset of the hearing, the landlord advised that the tenant had vacated the rental unit on April 30, 2019 returning possession of the rental unit to the landlord. Therefore, the landlord confirmed that he no longer required an Order of Possession as he had regained possession of the rental unit.

As well, the landlord confirmed that the tenant had paid \$198.00 of the \$1,398.00 rent owed for April 2019. Therefore, the amount of rent owed to the landlord for April 2019 is reduced to \$1,200.00

Pursuant to my authority under section 64(3)(c) of the *Act*, as it is not prejudicial to the tenant, I amended the landlord's application to remove his request for an Order of Possession and revise the amount of rent owed for April 2019 to \$1,200.00. Therefore, I considered the landlord's application only for his claim for unpaid rent for in the amount of \$1,200.00 for April 2019 and recovery of the filing fee for this application.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent for April 2019 and the recovery of the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The landlord submitted a written tenancy agreement into documentary evidence, and confirmed the following information pertaining the tenancy agreement. The tenancy began on November 1, 2018 as a fixed-term tenancy with a scheduled end date of August 31, 2019. Monthly rent, due on the first of the month, was \$1,398.00. The tenant paid a security deposit of \$700.00 at the beginning of the tenancy, which continues to be held by the landlord.

The landlord confirmed that the tenant paid the landlord \$198.00 by e-transfer of the \$1,398.00 owed for rent for April 2019. The landlord is seeking a monetary award for the remaining \$1,200.00 and recovery of the \$100.00 filing fee.

The landlord stated that the tenant did not provide him with a forwarding address.

Analysis

Section 26 of the *Act* requires that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

Based on the unchallenged testimony of the landlord regarding the terms of the written and signed tenancy agreement, I find that the tenant was obligated to pay monthly rent of \$1,398.00 for the month of April 2019.

Section 19 of the *Act* sets out the responsibilities of a landlord regarding the collection of the security deposit, as follows:

- (1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement.

- (2) If a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

During the hearing, the landlord confirmed that he had collected a security deposit of \$700.00 which is \$1.00 in excess of the $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. As such, I have deducted the amount of this overpayment of \$1.00 from the amount of money owed by the tenant to the landlord in order to allow the tenant to recover this overpayment. As a result, the security deposit amount continuing to be held by the landlord is adjusted to \$699.00.

As such, based on the testimony and evidence before me, on a balance of probabilities, I find that the landlord is entitled to a monetary award in the amount of \$1,199.00 for unpaid rent owing for the month April 2019.

Further to this, as the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to retain the tenant's security deposit of \$699.00. No interest is payable on the deposit during the period of this tenancy. In accordance with the offsetting provisions of section 72 of the *Act*, I order that the landlord retain the tenant's entire security deposit of \$699.00 in partial satisfaction of the monetary award, and I issue a Monetary Order of \$600.00 in the landlord's favour for the remaining amount of the monetary award owing.

A summary of the monetary award is provided as follows:

Item	Amount
Amount of unpaid rent owing to the landlord as a monetary award	\$1,199.00
Recovery of filing fee for this Application	+ 100.00
Total of Monetary Award to Landlord	\$1,299.00
LESS: Security deposit retained by landlord	(699.00)
Total Monetary Order in Favour of Landlord	\$600.00

Conclusion

The tenant's application to dispute the 10 Day Notice is dismissed.

I order the landlord to retain the \$699.00 security deposit for this tenancy in partial satisfaction of my finding that the landlord is entitled to a monetary award of \$1,299.00 for unpaid rent owed for April 2019 and the recovery of the filing fee for this application.

I issue a Monetary Order in the landlord's favour against the tenant in the amount of \$600.00. 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.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible.

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: May 27, 2019

Residential Tenancy Branch