



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL, MNDCL, FFL

Introduction

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

- an Order of Possession for unpaid rent and for cause pursuant to section 55;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; which the landlord identified as including
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they were handed the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on March 26, 2019, and the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on April 17, 2019, I find that the tenant was duly served with these Notices in accordance with section 88 of the *Act*. As the tenant also confirmed that they received copies of the landlord's dispute resolution hearing package including the landlord's amendment to the original claim and the landlord's written evidence by registered mail well in advance of this hearing, I find that the tenant was duly served with this material in accordance with sections 88 and 89 of the *Act*.

At the commencement of this hearing, the parties confirmed that the tenant vacated the rental unit on June 1, 2019, and that the landlord obtained possession of the rental unit that day. As such, the landlord withdrew their application for an Order of Possession

based on the 10 Day and 1 Month Notices. The landlord's application for an Order of Possession is hereby withdrawn.

During the hearing, the parties also referenced a hearing held on May 6, 2019, in which another Arbitrator appointed pursuant to the *Act* had issued a decision with respect to two applications by the tenant (see files noted above). Both parties confirmed that the remaining portion of the landlord's application was totally separate from the issues identified in the tenant's previous two applications referenced above.

At the hearing, the tenant confirmed that they understood that the landlord was seeking the recovery of the landlord's \$100.00 filing fee, listed on the amended Monetary Order Worksheet provided to the tenant. As such, the tenant had a full opportunity to know this portion of the landlord's claim, despite the landlord having failed to fill in the appropriate portion of the original application for dispute resolution signifying the landlord's attempt to recover this filing fee.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This month-to-month tenancy began on November 1, 2018. Monthly rent was set at \$850.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$425.00 security deposit paid on October 10, 2018.

The landlord's amended application for a monetary award of \$2,792.30 included the following items listed on the amended Monetary Order Worksheet the landlord entered into written evidence:

Item	Amount
Photocopies	\$18.36
Canada Post	17.78
Courier Service	17.91
Recovery of Filing Fee	100.00

Recovery of Time Spent by Landlord's Spouse on this Application and Tenancy (15 hours of time)	450.00
Recovery of Time Spent by Landlord on this Application and Tenancy (20 hours of time)	600.00
Canada Post	13.25
Unpaid April 2019 Rent	300.00
Unpaid May 2019 Rent	850.00
Security Deposit	425.00
Total Amount Claimed by Landlord	\$2,792.30

The tenant confirmed that they had not paid all of the April 2019 rent, but gave undisputed sworn testimony that they had paid the landlord \$50.00 of the \$300.00 identified as owing for April 2019 in the landlord's claim. The landlord and their spouse did not dispute the tenant's claim in this regard, noting that there was an unknown \$50.00 payment that had been made to the landlord's bank account, which was quite likely from the tenant. The tenant did not dispute the landlord's claim that the tenant had failed to pay any of the rent owed for May 2019.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant was responsible for the landlord's loss of rent and the amounts claimed in the landlord's application.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 26(1) of the *Act* establishes that "a tenant must pay rent when it is due under the tenancy agreement, whether or not the

landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.”

In this case, I find that there is undisputed sworn testimony and written evidence that the tenant has failed to pay \$250.00 of the rent owing from April 2019, and \$850.00 in rent owing from May 2019. I allow a monetary award in these amounts in the landlord's favour.

As mentioned at the hearing, the only hearing associated recovery that the *Act* allows an Applicant to obtain is the \$100.00 filing fee they pay for their application. As the landlord has been successful in this application, I allow the landlord to recover the \$100.00 filing fee.

I dismiss the remainder of the landlord's application to recover mailing costs, courier costs, photocopying costs and costs to reimburse the landlord and the landlord's spouse for the time they spent on these issues without leave to reapply. I do so as there is no provision in the *Act* to recover such hearing-related costs.

Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent and their filing fee, and to retain the tenant's security deposit:

Item	Amount
Unpaid April 2019 Rent	250.00
Unpaid May 2019 Rent	850.00
Less Security Deposit	-425.00
Plus Filing Fee for this Application	100.00
Total Monetary Order	\$775.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these

Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn.

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: June 06, 2019

Residential Tenancy Branch