



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, 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 pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- 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.

The landlord confirmed that on July 29, 2019, they were handed the tenant's Notice to End this Tenancy by August 30, 2019. The tenant confirmed that they were handed the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) by the landlord on August 5, 2019. On the basis of the sworn testimony of the parties, I find that both parties were duly served with the above Notices in accordance with section 88 of the *Act*. As the tenant confirmed that they were handed a copy of the landlord's original dispute resolution hearing package shortly after the landlord submitted their original application to the Residential Tenancy Branch on August 18, 2019, and the landlord's amended application on September 9, 2019, I find that the tenant was duly served with the original and amended hearing packages in accordance with section 89 of the *Act*. Since the tenant confirmed that they had received the landlord's written evidence, I find that the landlord's written evidence was served in accordance with section 88 of the *Act*. The tenant did not provide any written evidence for this matter.

At the beginning of this hearing, the parties agreed that the tenant vacated the rental unit on August 30, 2019, as per the tenant's notice to end this tenancy. Since the

landlord already has possession of the rental unit, the landlord withdrew their application for an Order of Possession. The landlord's application for an Order of Possession is hereby withdrawn.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

On December 6, 2018, the parties signed a month-to-month Residential Tenancy Agreement (the Agreement) for a tenancy that was to begin on January 15, 2019. According to the terms of the Agreement, monthly rent of \$1,800.00 was payable in advance on the 15th of each month. At the hearing, the parties agreed that they converted the due date for the monthly rent payment to the first of each month as of February 1, 2019. The landlord continues to hold the tenant's \$900.00 security deposit paid by the tenant when this tenancy began. The tenant testified that they have not provided their forwarding address in writing to the landlord for the return of their security deposit.

The landlord provided undisputed sworn testimony and written evidence that the tenant has not paid rent for August 2019, the last month of their tenancy. As such, the landlord applied for a monetary award of \$1,800.00, the amount owing for August 2019.

The tenant did not dispute the landlord's monetary claim. They noted that they have concerns of their own about this tenancy and plan to initiate their own application for dispute resolution about their concerns.

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 contravened the *Act* and the terms of their Agreement, and that the landlord suffered financial loss as a result of that contravention.

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.”

Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due.

The tenant did not dispute the landlord's assertion that no rent was paid by the tenant for the last month of their tenancy, August 2019. They confirmed that they had no legal authorization at that time to withhold paying the rent identified as owing by the landlord. On this basis and in accordance with the above-noted sections of the *Act*, I issue a monetary award in the landlord's favour in the amount of \$1,800.00, the amount owed for that month by the tenant.

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.

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

Conclusion

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

Item	Amount
Unpaid Rent for August 2019	\$1,800.00
Less Security Deposit	-900.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$1,000.00

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: October 28, 2019

Residential Tenancy Branch