



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SANDHILL DEVELOPMENT LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR 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 or utilities, pursuant to section 55;
- a monetary order for unpaid rent or utilities, pursuant to section 67;
- a monetary order for monetary loss or money owed pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

While the landlord's agent ("landlord") attended the hearing by way of conference call, the tenant did not. I waited until 9:40 a.m. to enable the tenant to participate in this scheduled hearing for 9:30 a.m. The landlord's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on November 7, 2019, by way of registered mail. The landlord provided a tracking number during the teleconference call. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on November 12, 2019, five days after its registered mailing.

The landlord's agent confirmed at the beginning of the hearing that the tenant had moved out on December 6, 2019, and no longer requires an Order of Possession. Accordingly, this portion of the landlord's application was cancelled.

Although the landlord had applied for a monetary order of \$4,500.00 in their initial claim, since they applied another \$2,250.00 in rent has become owing that was not included in the original application. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances

where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$4,500.00 to \$6,750.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This fixed-term tenancy began on August 1, 2019, and was to end on July 31, 2020. Monthly rent was set at \$2,250.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$1,125.00, and a pet damage deposit in the amount of \$200.00.

The landlord issued the 10 Day Notice on October 4, 2019, indicating an effective move-out date of October 15, 2019. The landlord testified that the tenant owes the entire monthly rent for October 2019 through to December 2019, and has not paid any rent since the 10 Day Notice was issued to him. The tenant moved out on December 6, 2019. The landlord is seeking a monetary order in the amount of \$6,750.00 for the unpaid rent, as well as recovery of the filing fee.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

The landlord provided undisputed evidence at this hearing as the tenant did not attend. I accept the landlord's testimony that the tenant did not pay rent for the months of October, November, and December 2019. On this basis, I allow the landlord to recover the unpaid rent for these three months.

As the landlord was successful with their application, I allow the landlord to recover the filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$1,125.00 and pet damage deposit in the amount of \$200.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security and pet damage deposit in partial satisfaction of the monetary claim.

Conclusion

The landlord cancelled their application for an Order of Possession as the tenant had moved out.

I allow the landlord's monetary claim as set out in the table below. The landlord is issued a monetary order in the amount of \$5,525.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security and pet damage deposit in satisfaction of the monetary claim.

Unpaid Rent for June, July, August, and September 2019	\$6,750.00
Filing Fee	100.00
Less Deposit Held by Landlord	-1,325.00
Total Monetary Order	\$5,525.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: December 19, 2019

Residential Tenancy Branch