



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL OPRM-DR**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended the hearing and had the opportunity to call witnesses and present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The tenant did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional fourteen minutes to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

At the outset, the landlord testified that the tenant vacated the unit and he no longer requested the Order of Possession. Accordingly, the application for the Order of Possession was dismissed without leave to reapply.

The landlord clarified that this application was for outstanding rent and reimbursement of the filing fee.

Service

The landlord testified the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on October 31, 2019 and deemed received by the tenant five days later under section 90 of the *Act*, on November 5, 2019.

The landlord provided the Canada Post tracking number referenced on the first page of this Decision in support of service. The landlord testified that the tenant collected and signed for the registered mail.

The landlord explained that the tenant did not provide a forwarding address to the landlord when he vacated the unit. The landlord testified that he followed the tenant in his vehicle when the tenant was moving out and ascertained the address to which the tenant was moving; the landlord testified that he believed this address to be the new residential address of the tenant.

Section 89 of the *Act* provides that the Notice of Hearing and Application for Dispute Resolution may be sent to the tenant as follows:

(c) by sending a copy by registered mail to the address at which the person resides [...].

Based upon the affirmed testimony of the landlord, I find the landlord served the tenant by registered mail sent to the address at which the tenant resided. Pursuant to sections 89 and 90, I find the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution as set out above.

Preliminary Issue

The landlord requested an amendment to the landlord's application to request that the landlord be authorized to apply the security deposit of \$1,700.00 held by the landlord to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit of \$1,700.00 at the start of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to request that the security deposit of \$1,700.00 be applied to any monetary award.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background and Evidence

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

The landlord provided the following undisputed testimony as the tenant did not attend the hearing.

This tenancy began on June 1, 2019. Monthly rent in the amount of \$3,400.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties. The landlord stated that he was unable to find the signatory page of the agreement and testified as to the tenancy relationship between the parties. A copy of the remaining pages were submitted by the landlord as evidence.

The tenancy was a 6-month fixed term due to end of November 30, 2019 intended to continue thereafter on a month-to-month basis.

A security deposit of \$1,700.00 was paid by the tenant to the landlord.

The tenant provided written notice to the landlord dated October 1, 2019 that the tenant intended to vacate on October 31, 2019. A copy of the written notice was submitted as evidence. The tenant did not pay rent for the month of October 2019. The landlord brought these proceedings on October 12, 2019.

The tenant vacated the unit before the end of October 2019.

The tenant has not provided the landlord with authorization to apply the security deposit to outstanding rent. The landlord has not received the tenant's forwarding address from the tenant.

The landlord submitted a Monetary Order Worksheet indicating that \$3,400.00 rent for October 2019 is owing by the tenant and remained unpaid.

The landlord requested an order authorizing the landlord to apply the security deposit to the outstanding rent. The landlord requested a monetary order as follows:

ITEM	AMOUNT
Rent	\$3,400.00
(Less security deposit)	(\$1,700.00)
Monetary Award Requested	\$1,700.00

The landlord also requested reimbursement of the filing fee for a total monetary award requested of \$1,800.00.

Analysis

The landlord provided undisputed evidence at this hearing as the tenant did not attend.

I have reviewed all documentary evidence and testimony.

I find the tenant did not pay the overdue rent and that rent for October 2019 in the amount of \$3,400.00 is owing the landlord. I accept the landlord's evidence in this regard.

Based on the uncontradicted evidence of the landlord, I find the landlord is entitled to a

monetary award pursuant to section 67 in the amount of \$3,400.00 for unpaid rent.

As the landlord was successful in this application, I award the landlord reimbursement of the \$100.00 filing fee.

Pursuant to section 72, I authorize the landlord to retain the security deposit in partial satisfaction of the monetary award.

In conclusion, I grant the landlord a monetary award in the amount of \$1,800.00.

Conclusion

I grant the landlord a monetary award in the amount of \$1,800.00.

This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) and be 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 13, 2019

Residential Tenancy Branch