



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL, FFL

Introduction

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

- an Order of Possession for unpaid rent and utilities, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent and utilities, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Tenant A.K., landlord Y.R. and landlord Y.R.'s counsel attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Counsel submitted that the tenants were each served with the landlords' application for dispute resolution via registered mail on November 20, 2019. Registered mail receipts evidencing the above mailings were entered into evidence. The tenant testified that he received the landlords' application for dispute resolution on December 23, 2019. The Canada Post Tracking website shows that the landlords' application for dispute resolution was mailed to each tenant on November 20, 2019 and successfully delivered to each tenant on November 22, 2019. Based on the Canada Post tracking website, I find that service of the landlords' application for dispute resolution was effected on the tenants on November 22, 2019, in accordance with section 89 of the *Act*.

Preliminary Issue- Amendments

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

The tenant testified to the correct spelling of his first name. The landlords used the shortened version of tenant A.K.'s first name in their application for dispute resolution. Pursuant to section 64 of the *Act*, I amend the landlords' application to state the full first name of tenant A.K.

Counsel for the landlord testified that since filing for dispute resolution the landlords' claim for unpaid rent has increased.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the application for dispute resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an amendment to an application for dispute resolution need not be submitted or served.

The landlords' original application claimed unpaid rent and utilities in the amount of \$30,208.00. Since filing for dispute resolution, counsel submitted that the amount of rent owed by the tenant has increased the total claim to \$36,459.58. Counsel for the landlord submitted that the landlord is abandoning the portion of her claim for unpaid rent that exceeds the \$35,000.00 limit of the Residential Tenancy Branch.

I find that in this case the fact that the landlords are seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlords filed the application, should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlords' monetary claim to \$35,000.00

Preliminary Issue- Withdrawal of Claim

At the beginning of the hearing landlord Y.R. withdrew her claim for an Order of Possession as an Order of Possession was granted in a previous hearing through a settlement agreement. The file number for the previous decision is on the cover page of this decision.

Both parties agreed that the tenants will move out of the subject rental property by January 31, 2020 and that rent for January 2020 has been paid by the tenants.

Issues to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent and utilities, pursuant to sections 26 and 67 of the *Act*?
2. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on August 1, 2010 and is currently ongoing. The most recent tenancy agreement came into effect on August 1, 2017, was signed by both parties and a copy was submitted for this application. Monthly rent in the amount of \$4,100.00 is payable on the tenth day of each month. A security deposit of \$1,747.50 and a pet damage deposit of \$1,747.50 were paid by the tenants to the landlords.

Counsel for the landlords submitted the following. The tenants started to fall behind on their rent payments after signing the most recent tenancy agreement. Given the long duration of the tenancy, the landlords were willing to work with the tenants to have the outstanding rent paid; however, the outstanding rent was not paid, and unpaid rent accumulated rapidly. Between the period of August 2017 to August 2019 the tenants accrued \$16,433.00 in unpaid rent. The tenants have not paid any rent for the months of September to December 2019 and currently owe the landlords \$32,833.00. An excel

spreadsheet setting out the rent owing and the outstanding balance for each month from August 2017 to December 2019 was entered into evidence.

The tenant testified that he did not pay any rent from September to December 2019 but could neither confirm nor deny the amount of unpaid rent he accrued from August 2017 to August 2019. The tenant testified that he agrees that he owes money for unpaid rent from August 2017 to August 2019 but has not checked his records to determine what amount is outstanding.

Counsel for the landlords submitted that the tenancy agreement states that utilities are not included in the rent and are to be paid, in their entirety, by the tenants. The tenancy agreement entered into evidence confirms counsel's submissions. Counsel for the landlords submitted that from 2014 to 2018 the tenants failed to pay their utility bills and those bills were subsequently added to the landlords' property taxes and paid by the landlords. The landlords entered into evidence an email from the City the subject rental property is located in, which sets out the amount of unpaid utilities from the subject rental property that were added to the landlords' property taxes. The amounts stated in the email are as follows:

Year	Unpaid Utilities
2014	\$378.31
2015	\$749.76
2016	\$39.40
2017	\$861.63
2018	\$1,497.48
Total	\$3,526.58

The tenant testified that he paid the utility bills as they came in and so does not know how utility charges would have accumulated. The tenant did not enter any evidence for this proceeding. The tenant did not dispute counsel's submissions that utilities were not included in the rent.

Counsel for the landlord submitted the following. The tenants were aware of their outstanding rent and utility payments long before they were served with the landlords' application for dispute resolution. The tenants had ample time to review their payment history and prepare for this hearing and since the tenants did not submit any evidence to dispute the landlords' claims, the landlords' figures for unpaid rent and utilities should be accepted.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act* and the tenancy agreement, I find that the tenants were obligated to pay the monthly rent in the amount of \$4,100.00 on the first day of each month, which they failed to do.

I find that the tenants received official notice of the landlords' claim for unpaid rent and utilities on November 22, 2019, thus providing them with nearly two months to review their past rental payments and submit evidence. I find that the tenants are not entitled to benefit from their unpreparedness. Based on counsel's submissions and the excel spreadsheet entered into evidence, both of which I find are credible, I find, on a balance of probabilities, that the tenant owes the landlord \$32,833.00 in unpaid rent from August 2017 to December 2019, pursuant to section 26 of the *Act*.

Section 7(1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Based on counsel's submissions and the tenancy agreement, I find that utilities were not included in the rent. Based on counsel's submissions and the email from the City setting out the amount of unpaid utilities transferred to the landlords' property taxes, I find that the tenants owe the landlords \$3,526.58 in unpaid utilities from 2014-2018. I find tenant A.K.'s submissions not to be credible as they are contrary to the City email entered into evidence by the landlords and are not supported by any physical evidence such as paid utility bills. I therefore accept the landlords' version of events over that of the tenant A.K.'s.

As the landlords were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Pursuant to section 58 and 85 of the *Act*, the monetary limit for claims is \$35,000.00. The landlords' original claim is over this amount; however, the landlords have abandoned that portion of their claim exceeding \$35,000.00 which amounts to an abandonment of \$1,459.58. As the landlords' claim is now \$35,000.00, I find that I have jurisdiction to render a decision in this matter.

Conclusion

I issue a Monetary Order to the landlords under the following terms:

Item	Amount
Unpaid rent	\$31,373.42
Unpaid utilities	\$3,526.58
Filing Fee	\$100.00
TOTAL	\$35,000.00

The landlords are provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: January 16, 2020

Residential Tenancy Branch