



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNR, FFT, DRI, OPU, OPN, MNRL-S, MNDCL-S, OPC, FFL,

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order for the landlord to comply with the Act, regulation and/or tenancy agreement, pursuant to section 62;
- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Ten-Day Notice"), pursuant to section 46;
- cancelation of a Notice of Rent Increase, pursuant to section 43; and
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the landlord's application pursuant to the *Act* for:

- an order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent and utilities pursuant to sections 45, 46 and 55;
- an order for possession under a One Month Notice to End Tenancy for Cause ("One Month Notice") pursuant to sections 47 and 55;
- a monetary order for unpaid rent, utilities and for compensation for damage or loss under the Act, Residential Tenancy Regulation ("Regulation") or tenancy agreement pursuant to sections 38 and 67 of the Act with a security deposit applied; and
- authorization to recover the filing fee for this application, pursuant to section 72.

I left the teleconference connection open until 11:59 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord attended the hearing and 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the notice of hearing, and evidence (the Materials) in person on February 18, 2020 and find the tenant has been served the Materials in accordance with section 89(2)(a) of the Act.

Preliminary Issue – Tenants' Application

Rules 7.1, 7.2 and 7.3 of the Rules of Procedure provide as follows:

Rule 7 – During the hearing

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.2 Delay in the start of a hearing

In the event of a delay of a start of a conference call hearing, each party must stay available on the line to commence the hearing for 30 minutes after the time scheduled for the start of the hearing.

In the event of a delay of a face-to-face hearing, unless otherwise advised, the parties must remain available to commence the hearing at the hearing location for 30 minutes after the time scheduled for the start of the hearing.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Accordingly, in the absence of any attendance at this hearing by the tenant, I order the tenant's application dismissed without leave to reapply.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord informed me the neighbour of the rental property informed him the tenant vacated the rental unit on February 28, 2020 at night. On February 29, 2020 the landlord inspected the rental unit and confirmed it is vacant. The tenant did not provide the forwarding address to the landlord.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be

determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Issues to be Decided

Is the landlord entitled to:

- a Monetary Order for unpaid rent, utilities and for compensation for damage or loss under the Act, the Regulation or the tenancy agreement?
- authorization to recover the filing fee for this application from the tenant?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below. I explained to the attending party it is his obligation to present the evidence produced.

The fixed-term tenancy started on November 01, 2019 and was supposed to end on October 30, 2021. Monthly rent was \$2,200.00 plus half of the cost of utilities, due on the 30th day of the previous month. At the outset of the tenancy the landlord collected a security deposit of \$1,100.00 and still holds it in trust. A copy of the signed written tenancy agreement with a one-page addendum was provided. The agreement indicates the utilities the tenant is required to pay include electricity, natural gas, garbage collection, water and laundry. The addendum indicates: "Tenant to keep laundry room, washer and dryer and its filter clear after their every use. Laundry to be used once in a week and no dryer to be used in the cooling season (April to October). Tenant to pay \$40/month (for maximum 4 times in a month) for it's use."

In a January 27, 2020 letter (submitted into evidence), the landlord asks the tenant to pay the balance of \$507.57 for utilities.

The landlord testified that on February 01, 2020 he posted the ten-day Notice to the tenant's door with an effective date of February 10, 2020. When the Notice was issued the tenant was in arrears for \$2,200.00 for rent and \$507.57 for utilities.

On February 12, 2020 the landlord received the one-month notice to end tenancy issued by the tenant, dated January 31, 2020. The landlord affirmed he has been advertising the rental unit on Craigslist since mid-February and the original asking price was \$2,000.00. On March 06, 2020 the landlord reduced the asking price to \$1,950.00. The rental unit has not been rented.

In a February 26, 2020 text message (submitted into evidence), the landlord asked the tenant to authorize him to show the rental unit to a potential new tenant. The landlord affirmed the tenant did not authorize him to enter the rental unit and he was unable to show the unit.

A monetary order worksheet (RTB form 37) was also submitted, as well as two one-page hand written synopses and the following bills:

- gas due on December 24, 2019;
- gas due on January 24, 2019;
- gas due on February 22, 2020;
- electricity, billed on November 22, 2019;
- electricity, billed on January 22, 2020;
- property tax notice due on July 03, 2019, containing the costs for garbage and water;

A projection of the electricity bill for the period of January 21 to March 19, 2020 was also submitted into evidence.

The landlord testified the tenant used the laundry up to four times per week, every week. The landlord also testified the tenant paid \$240 on November 10, 2019 and \$230.00 in December 2019, totalling \$470.00.

Analysis

The testimony provided by the landlord during the hearing was cohesive and convincing.

Unpaid rent for February 2020

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept the landlord's uncontroverted evidence (tenancy agreement, ten-day Notice, the January 27, 2020 letter and testimony) and find the tenant owes rent for February 2020 in the amount of \$2,200.00.

Loss of rent for March 2020

Based on the undisputed testimony, I find the tenant did not pay the rent for the month of March 2020 and moved out of the rental unit on February 28, 2020.

Residential Tenancy Branch Policy Guideline 5 states:

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

I find the landlord is taking steps to mitigate the loss of rent and the former tenant made it difficult for the landlord to rent the rental unit to a new tenant. I order the tenant to pay the landlord \$2,200.00 for March's rent.

It was reasonable the landlord did not exercise the right to enter the rental unit under Section 29(1)(a) as he did not want to expose a potential new tenant to a hostile tenant or a unit that was in disarray.

Unpaid utilities from November 2019 to January 2020

I accept the landlord's uncontroverted evidence (tenancy agreement and testimony) and find the tenant owes the payment of utilities:

- Electricity bill totaled \$684.05 for consumption from September 20, 2019 to November 20, 2019. The tenant moved in on November 01, 2019. The tenant owes half of the pro rata total for 20 days (\$684.05 divided by 62, multiplied by 20, divided by 2), totaling \$110.33.
- Electricity bill totaled \$854.72 for consumption from November 21, 2019 to January 20, 2020. The tenant owes half of this amount, totaling \$427.36.
- Gas bill totaled \$180.13 for consumption from October 31, 2019 to December 02, 2019. The tenant owes half of the pro rata total for 32 days (\$180.13 divided by 33, multiplied by 32, divided by 2), totaling \$87.33.
- Gas bill totaled \$207.98 for consumption from December 02, 2019 to January 02, 2020. The tenant owes half of this amount, totaling \$103.99.
- Gas bill totaled \$238.95 for consumption from January 02 to 31 2020. The tenant owes half of this amount, totaling \$119.47.

- The 2019 property tax notice indicates the fee for the garbage collection for the year of 2019 is \$112.00 and \$167.00, totaling \$279.00. The tenant owes half of this amount pro rata for 2 months (\$279 divided by 12, multiplied by 2, divided by 2), totaling \$23.25.
- The 2019 property tax notice indicates the fee for water for the year of 2019 is \$716.00. The tenant owes half of this amount pro rata for 2 months (\$716 divided by 12, multiplied by 2, divided by 2), totaling \$59.66.

The electricity bill for the period of January 21 to January 31 was not entered into evidence. The document exhibit 6 is a projection for the billing period of January 21 to March 19, 2020. I find it is not fair to order the tenant to make a payment based on a projection. When the final bill will be issued and the landlord may apply for a monetary award.

The same conclusion is applied to the claims for garbage collection and water for the 2020 calendar year.

Laundry

I accept the landlord's uncontroverted evidence (tenancy agreement and testimony) and find the tenant owes the laundry fees of \$40.00 per month for the months of November and December 2019 and January 2020. I find the tenant owes \$120.00.

Security deposit

The landlord and tenant signed the move-in Condition Inspection Report. The move-out Condition Inspection Report was not conducted.

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

In summary:

Unpaid rent February 2020	\$2,200.00
Loss of rent March 2020	\$2,200.00
Unpaid utilities from November 2019 to January 2020	\$931.99
Laundry	\$120.00
Filing fee	\$100.00
Sub-total	\$5,541.99
Previous payments	\$-470.00
Security deposit	\$-1,100.00
Total	\$3,981.99

Conclusion

Pursuant to sections 38, 67 and 72 of the Act, I authorize the landlord to retain the tenant's security deposit of \$1,100.00 in partial satisfaction of losses incurred and grant the landlord a monetary order in the amount of **\$3,981.99**.

The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant 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.

I warn the tenant that she may be liable for any costs the landlord incur to enforce the order of possession and monetary award.

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: March 10, 2020

Residential Tenancy Branch