



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, LRE, OT // OPR-DR, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- an order of possession for non-payment of rent pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$0.01 pursuant to section 67;
- an order to suspend or set conditions on the landlord’s right to enter the rental unit pursuant to section 70;
- an order that the landlord return the cell phone that she alleges he stole from her.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Preliminary Issue – Service of Documents

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form for her application. The landlord testified, and the tenants confirmed, that the landlord served the tenant with the notice of dispute resolution proceeding form and supporting their evidence package for his application.

On her application, the tenant indicated that she would know what expenses she was going to claim at the hearing and was claiming \$0.01 to “reserve her right” to claim expenses at the hearing. The tenant provided no documentary evidence whatsoever in support of her claim prior to or at the hearing.

The tenant testified that, due to the stress she has been suffering as a result of the COVID-19 pandemic, her mental health has been negatively affected, and she was not able to assemble her documentary evidence in advance of the hearing.

The tenant sought an adjournment of this hearing, but the landlord opposed granting one, as he argued he had a right to have his application adjudicated.

The tenant advised me that she is no longer residing in the rental unit, and that her application is for the reimbursement of expenses and the return of her cell phone.

In the circumstances, and with the consent of the tenant, I dismiss the tenant's application, with leave for her to reapply. This will give the tenant an opportunity to re-draft her claim, seeking only the relief she now requires, and will give her sufficient time to assemble her documentary evidence. It will also allow the landlord to have his application adjudicated in a timely fashion.

Preliminary Issue – Landlord's Application

The landlord's claim, as drafted, does not include a claim for recovery of unpaid rent. At the hearing, both parties proceeded as if the application included such a claim and made submissions on the issue of whether the tenant owes March 2020. Rule of Procedure 4.2 states:

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

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.

In this case, I find that the landlord's claim for unpaid rent was, in fact, *actually* anticipated by the tenant. She made fulsome submissions on it at the hearing. As such, I amend the landlord's application to include a claim for March 2020 rent (\$1,050).

Additionally, as the tenant no longer resides at the rental unit, and indicated that she does not want to return, I dismiss the landlord's application for an order of possession, as it is no longer necessary.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,050; and
- 2) recover his filing fee;

Background and Evidence

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

The parties entered into a written, fixed term tenancy agreement starting December 1, 2019. Monthly rent was \$1,050 and was payable on the first of each month. The tenant paid the landlord a security deposit of \$525, which the landlord continues to hold in trust for the tenant.

The landlord testified that the tenant has not paid rent for March 2020, and that she abandoned the unit on or about March 10, 2020. He testified that he collected the tenant's belongings from the rental unit on April 18, 2020 and has them in storage.

The tenant does not deny that she failed to pay March 2020 rent, or that she left the rental unit. However, she denied that she abandoned the unit. Rather she testified that the landlord changed the locks on the rental unit, denying her access. She testified that the last night she stayed at the rental unit was March 4, 2020.

The tenant testified that the landlord has made inappropriate advances towards her and asked inappropriate questions about her personal life. She testified that the landlord made false statement about her to the police. She also stated that the landlord snatched her phone out of her hands and did not return it. She testified there is an ongoing police investigation regarding the stolen cell phone.

As stated above, the tenant has not submitted any documentary evidence (such as photographs, text messages, emails, recordings, or police reports) to corroborate her testimony.

The landlord denied changing the rental unit locks, acting as alleged towards the tenant, stealing the tenant's phone, or making false statements to the police.

The tenant testified that she was a good tenant. She admitted that she paid rent late in January 2020, but that, as a gesture of good will, she paid the landlord an additional \$200 in rent when she paid January 2020 rent.

The tenant argued that the tenancy agreement was “voided” by the landlord’s conduct, and, as such, she is under no obligation to pay March 2020 rent.

Analysis

Parties agree that the tenant did not pay March 2020 rent. The tenant argued that she is not required to do so, as the landlord voided the tenancy agreement through his actions.

The landlord denied he acted as alleged and asserts that the tenancy agreement is valid.

The tenant made serious allegations against the landlord. She offered no documentary evidence which might corroborate these allegations. I would have expected correspondence of some kind relating to offensive conduct to be submitted, as well as police reports (given that, according to the tenant, the police have been in contact her or the landlord in connection with the tenancy on at least two occasions).

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

Applied to the present case, I find that the landlord bears the evidentiary burden to prove that the tenant failed to pay March 2020 rent. Based on the testimony of the parties, I find that he has done this. The onus then shifts to the tenant to prove that the tenancy agreement is void, thus relieving her of her obligation to pay March 2020 rent. In light of the absence of corroborating evidence, I find that the tenant has failed to discharge her evidentiary burden to prove that this was the case.

As such, I find that the tenancy agreement is valid, and that the tenant was obligated to pay March 2020 rent. As such, I order the tenant to pay \$1,050 to the landlord in compensation for March 2020 rent.

I note that section 7 of the *Residential Tenancy Act Regulations* (the “**Regulations**”) states:

Non-refundable fees charged by landlord

7(1)A landlord may charge any of the following non-refundable fees:

[...]

(d)subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2)A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Section 5 of the Act states:

This Act cannot be avoided

5(1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

As such, pursuant to section 7 of the Regulations, I find that the landlord is not permitted to charge, and the tenant is not permitted to pay, a late fee of more the \$25, so long as the tenancy agreement explicitly provides for that fee. Per section 5 of the Act, this monetary limit on late fees cannot be avoided.

The tenancy agreement does not contain any provision permitting the landlord to charge a late fee.

Accordingly, I find that the tenant overpaid her January 2020 rent by \$200. This amount must be credited towards her rental arrears.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$425, representing the following:

March Rent	\$1,050.00
Filing Fee	\$100.00
January Rent Overpayment	-\$200.00
Security Deposit Credit	-\$525.00
Total	\$425.00

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: April 29, 2020

Residential Tenancy Branch