



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR
MNDCL, OPR, MNRL-S, FFL

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46.

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

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67;
- a Monetary Order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:52 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord's agent 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's agent and I were the only ones who had called into this teleconference.

The landlord testified that the tenant e-mailed her on August 17, 2020 and informed her that he moved out. The landlord testified that she is no longer seeking an Order of Possession. As this tenancy has ended, I dismiss the tenant's application for dispute resolution and the landlord's claim for an Order of Possession, with leave to reapply.

The landlord testified that the tenant was personally served with the landlord's application for dispute resolution on August 10, 2020. The landlord entered into evidence a copy of the first page of the Notice of Dispute resolution which was signed as received by the tenant on August 10, 2020. I find that the tenant was served in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

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.

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 landlord's original application claimed unpaid rent in the amount of \$2,550.00. The agent testified that the amount of rent owed by the tenant is currently \$8,650.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$8,650.00.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?

4. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

The agent provided the following undisputed testimony. This tenancy began on April 1, 2017 and ended on or around August 17, 2020. Monthly rent in the amount of \$2,550.00 was payable on the first day of each month. A security deposit of \$1,200.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement states that water and sewer are not included in the rent.

The landlord testified that the tenant has considerable rental arrears as outlined in the table below:

Month	Paid		Balance
	By Tenant	Supplement	
March	\$0	\$0	\$2550.00
April	\$1550	\$0	\$1000.00
May	\$2050	\$500	\$0.00
June	\$1050	\$500	\$1000.00
July	\$0	\$500	\$2050.00
August	\$0	\$500	\$2050.00
Total Outstanding Rent			\$8650.00

The landlord entered into evidence text messages between the parties in which the tenant acknowledges that he owes rent and indicates that he is not able to pay it due to COVID 19 and other debts he owes to other parties.

The landlord's agent testified that the tenant did not pay the last metered utility bill (water and sewer) in the amount of \$224.11, the bill was entered into evidence. The billing period on the bill is from April 1, 2020 to June 30, 2020. The landlord's agent testified that in addition to the above utility bill, a previously unpaid utility bill was added

to the landlord's property taxes and interest has accrued on the arrears. The landlord's agent entered into evidence the landlord's 2020 Property Tax Notice which states that the landlord owes \$84.21 in arrears and \$3.85 in interest on those arrears.

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*, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,550.00 on the first day of each month. Based on the testimony of the agent and the text messages entered into evidence I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$8,650.00 in unpaid rent from March 2020 to August 2020.

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.

Section 67 of the *Act* states that without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The tenancy agreement states that water and sewer are not included in the rent. I accept the agent's undisputed testimony that the tenant did not pay the utility bill in question, contrary to the tenancy agreement. Pursuant to sections 7 and 67 of the *Act*, I find that the landlord is entitled to a monetary award in the amount of \$224.11.

Outstanding utility bills are added to property taxes if they are not paid. Based on the landlord's 2020 Property Tax Notice and the agent's testimony, I find that the tenant failed to pay previous utilities in the amount of \$84.21 and interest in the amount of \$3.85 has accrued. I find that the landlords are entitled to recover the above sums from the tenant.

Section 38 of the *Act* states that within 15 days after the later of:

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security deposit pursuant to section 38(a) and 38(b) of the *Act*.

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

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,200.00.

Conclusion

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

Item	Amount
Unpaid rent	\$8,650.00
Unpaid utilities and interest	\$312.17
Filing fee	\$100.00
Less security deposit	-\$1,200.00
TOTAL	\$7,862.17

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: August 28, 2020

Residential Tenancy Branch