



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNR
 OPR, OPB, 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:

- more time to cancel a Notice to End Tenancy, pursuant to section 66; and
- 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;
- an Order of Possession because the tenancy agreement states the tenant will vacate the rental unit or site at the end of the fixed term;
- 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 tenants, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:44 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and the landlord's agent (the "agent") attended the hearing and were 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, his agent and I were the only ones who had called into this teleconference.

Preliminary Issue- Service

The agent testified that the tenant was served with the landlord's application or dispute resolution via registered mail on September 30, 2020. The agent provided the Canada Post tracking number to confirm the above mailing. The tracking number is located on the cover page of this decision. The Canada Post website confirmed that the package was delivered on October 2, 2020. I find that the tenant was served in accordance with section 89 of the *Act*.

Rule 7 of the Rules of Procedure provides as follows:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that 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.

The tenant did not attend this hearing. Therefore, pursuant to Rule 7 of the Rules of Procedure, in the absence of any evidence or submissions from the tenant I order the tenant's application dismissed without liberty to reapply.

Preliminary Issue- Dismissal

The agent testified that the tenant moved out of the subject rental property in the first week of October 2020. As this tenancy has ended, I dismiss the landlord's application for:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55; and
- an Order of Possession because the tenancy agreement states the tenant will vacate the rental unit or site at the end of the fixed term;

because the issues raised in the above application are no longer applicable.

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 \$700.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$3,250.00

I find that the fact that the landlord is seeking compensation for all outstanding rent, not just the amount claimable on the date the landlord filed the application, 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 \$3,250.00.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to retain the tenant’s security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee for this application 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 the landlord and his agent, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord’s claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on June 1, 2020 and ended in the first week of October 2020. Monthly rent in the amount of \$1,400.00 was payable on the first day of each month. A security deposit of \$700.00

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 agent testified that the tenant only paid \$950.00 towards July 2020's rent and did not pay any rent for August or September 2020. The agent testified that the tenant owes \$3,250.00 in unpaid rent. The landlord entered into evidence text messages between the tenant and the landlord which confirm that the tenant was not paying rent.

The agent testified that the tenant did not provide the landlord with a forwarding address.

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*.

Residential Tenancy Branch Policy Guideline 52 states:

If the tenancy has ended and the landlord wants to pursue an amount of unpaid affected rent, the landlord does not have to give the tenant a repayment plan. The landlord may apply to the RTB for a monetary order

"Affected rent" is rent that becomes due to be paid by a tenant in accordance with a tenancy agreement during the "specified period" between March 18, 2020 and August 17, 2020.

I accept the undisputed testimony of the landlord's agent that the tenant owes the landlord \$3,250.00 in unpaid rent. As this tenancy has ended, I find that the landlord is entitled to recover the entirety of outstanding rent owed by the tenant, including "affected rent".

Section 38(1) 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(1)(a) and 38(1)(b) 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 or pet damage deposit due to the tenant. I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$700.00.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

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

Item	Amount
July rent	\$450.00
August rent	\$1,400.00
September rent	\$1,400.00
Filing Fee	\$100.00
Less security deposit	-\$700.00
TOTAL	\$2,650.00

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.

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: November 03, 2020

Residential Tenancy Branch