



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HomeLife Advantage Realty
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPRM-DR, OPR-DR-PP, FFL**

Introduction

On September 30, 2020, an Adjudicator appointed pursuant to the *Residential Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator noted in her decision that the landlord's name on the tenancy agreement did not match the landlord's name on the Application for Dispute Resolution Proceedings.

This participatory hearing was reconvened to hear the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- An order of possession and a monetary order for unpaid rent, by direct request (with a payment plan) pursuant to sections 46 and 55;
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord was represented at the hearing by property manager, BC ("landlord"). The tenant, TW also attended the hearing. The tenant, DH did not attend this hearing, although I left the teleconference hearing connection open until 10:30 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. 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.

The landlord testified that she served the tenant, DH with the Notice of Reconvened Hearing and interim decision by registered mail on October 2, 2020. The tracking number for the registered mailing is noted on the cover page of this decision. The landlord testified the package was sent to the tenant's residential address, at the time. The tenant DH eventually vacated the rental unit on October 7, 2020. I find the tenant deemed served with the Notice of Reconvened Hearing and related documents on

October 7, 2020, five days after mailing in accordance with sections 89 and 90 of the Act.

This hearing was conducted in the absence of the tenant, DH in accordance with Rule 7 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issue

The last tenant to leave the rental unit, DH, vacated the rental unit on October 7, 2020. The landlord acknowledges she no longer requires an order of possession, as originally sought in her application. Pursuant to section 62(4), I dismiss this part of the landlord's application as it does not disclose a dispute that may be determined under Part 5 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord gave the following testimony. The month to month tenancy began on September 1, 2019 with rent set at \$2,350.00 per month payable on the first day of each month. A security deposit of \$1,175.00 was collected by the landlord which the landlord continues to hold. A condition inspection report was done at the commencement of the tenancy.

In December of 2019, the owner of the rental unit on the tenancy agreement died and management changed hands. A letter was sent to all tenants affected by this change in December of 2019. The tenant, TW does not dispute receiving this letter.

The landlord acknowledges receiving the notice to end tenancy signed by the tenant, TW on April 24, 2020. The effective date stated on the notice is May 31, 2020. The landlord testified that the remaining tenant, DH did not enter into a new tenancy agreement with the landlord when TW vacated the rental unit. The landlord acknowledges the tenant TW has not occupied the rental unit since he moved out on May 31, 2020.

The landlord testified that she received only on half the month's rent for May 2020. The remaining tenant, DH has not paid rent for June, July, August, or September. He vacated the rental unit on October 7th, and has not paid rent for those 7 days, either.

The tenant TW gave the following testimony. The rent for May was paid by the co-tenant, DH, however TW acknowledges he has not paid his half of May's rent. He seeks the landlord's consent to deduct his half of the security deposit from the arrears he owes for May's rent (\$587.50). TW agrees he owes arrears for the other quarter month's rent for May, (\$587.50).

The tenant TW submits that he is not responsible for paying rent beyond May, 2020 as his tenancy with the landlord has ended.

Analysis

Pursuant to section 44(1)(a)(i), the tenancy ended when the tenant, TW gave the landlord notice to end tenancy effective May 31, 2020. The tenant TW's obligation to pay rent ended when the tenancy ended.

Section 57(1) defines an overholding as a tenant who continues to occupy a rental unit after the tenancy has ended. The tenant, DH continued to occupy the rental unit and did not enter into a new tenancy agreement with the landlord after the tenancy ended, making him an overholding tenant. Pursuant to section 57(3), a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended. Based on the undisputed testimony of the landlord, I find the tenant, DH occupied the rental unit from June 1st to October 7th, 2020. The overholding tenant, DH vacated the rental unit on October 7th. I determined the per diem rate of rent as follows: [$\$2,350 / 31$ (days in October) = \$75.80]. The landlord is awarded a monetary order for unpaid rent from the overholding tenant, DH as set out in the table below.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant DH's half of the security deposit in the amount of \$587.50. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain \$587.50 in partial satisfaction of the monetary claim.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Item	Amount
June rent	\$2,350.00

July rent	\$2,350.00
August rent	\$2,350.00
September rent	\$2,350.00
7 days rent for October (\$75.80 x 7)	\$530.60
Filing fee	\$100.00
Less DH's half of the security deposit	(\$587.50)
Total	\$9,443.10

I issue a monetary order against the tenant, DH in the amount of **\$9,443.10**.

Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of their dispute. Both parties agreed to the following final and binding settlement of all issues currently under dispute at this time:

1. The parties agree the tenants vacated the rental unit and the landlord no longer requires an order of possession.
2. The tenancy agreement with the tenant, TW ended on May 31, 2020 in accordance with section 44(1)(a)(i) of the *Act*. The tenant acknowledges he is in arrears of rent for a half month's rent for May, 2020.
3. The tenant, TW and the landlord agree that the landlord may retain the tenant, TW's half of the security deposit in the amount of \$587.50 in partial satisfaction of his arrears in rent for the month of May, 2020.
4. The landlord will be awarded a monetary order against the tenant, TW in the amount of **\$587.50**, representing the remaining half of May rent that he acknowledges was not paid to the landlord.

Both parties testified at the hearing that they understood and agreed to the above terms, free of any duress or coercion. Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute.

In order to implement the above settlement reached between the parties and as discussed with them at the hearing, I issue a monetary Order in the landlord's favour against the tenant, TW in the amount of **\$587.50**.

Conclusion

The landlord's application for an order of possession is dismissed without leave to reapply.

I issue a monetary order in the landlord's favour against the tenant, DH in the amount of **\$9,443.10**.

I issue a monetary order in the landlord's favour against the tenant, TW in the amount of **\$587.50**.

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: December 08, 2020

Residential Tenancy Branch