



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR-PP, MNDCL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, with a request for a monetary order for outstanding unpaid rent from the Tenant.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only person to call into the hearing was the Landlord, who indicated that he was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Landlord.

I explained the hearing process to the Landlord and gave him an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on September 26, 2020. The Landlord provided a Canada Post tracking number as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

Preliminary and Procedural Matters

The Landlord provided his email address in the Application and he said he did not know the Tenant's email address. The Landlord also confirmed his understanding that the Decision would be emailed to him and mailed to the Tenant, and that any Orders would be sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord provided a tenancy agreement, which sets out that the fixed term tenancy began on July 1, 2018, running to December 31, 2019, and then operating on a month-to-month basis. The tenancy agreement indicated that the Tenant was to pay the Landlord a monthly rent of \$959.00, due on the first day of each month. The Landlord said that the Tenant did not pay the Landlord a security deposit or pet damage deposit. The Landlord also said that the rent had risen to \$982.00, plus \$20.00 per month parking fees.

During the hearing, the Landlord told me the amount that the Tenant had paid each month since December 2019. I put the numbers into a spreadsheet and the following table details the amounts paid and the amount owing each month, according to the Landlord. The Landlord also set out most of these amounts in his Application, which amounts are included in the fourth column.

	MONTH	Amt paid per Hearing	Amt paid per Appl.	Amount Owing
1	December 2019	\$900.00	\$900.00	\$102.00
2	January 2020	\$893.00	\$995.00	\$??
3	February	\$886.00	\$995.00	\$??
4	March	\$879.00	\$995.00	\$??
5	April	\$872.00	\$995.00	\$??
6	May	\$865.00	\$995.00	\$??

7	June	\$643.00	\$800.00	\$??
8	July	\$750.00	\$750.00	\$252.00
9	August	\$300.00	\$300.00	\$702.00
10	September	\$700.00	\$??	\$302.00
11	October	\$0.00	\$??	\$1,002.00
12	November	\$1,200.00	\$??	\$(198)
13	December	\$400.00	\$??	\$602.00
	TOTALS	\$9,288.00	\$7,725.00	\$3738.00

Further, in the Landlord's Direct Request Worksheet, he said that the Tenant did not pay anything for September 2020, and the Landlord was requesting recovery of the September rent of \$982.00.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent." There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

However, I find that the Landlord's evidence in his Application is inconsistent with his testimony provided in the hearing, which is also inconsistent with his evidence submitted in the Direct Request Worksheet. Given these internal inconsistencies in the Landlord's evidence, I find that the Landlord has provided insufficient evidence for me to determine the amount owing to the Landlord in this matter. I, therefore, dismiss this matter without leave to reapply. I also dismiss the Landlord's Application for an order of possession, based on unpaid rent. The Landlord's Application is dismissed wholly without leave to reapply, pursuant to section 62 of the Act.

Conclusion

The Landlord is unsuccessful in his Application for a monetary award and an order of

possession for unpaid rent, as the Landlord provided insufficient evidence to establish the amount of rent owing to the Landlord by the Tenant. As a result, this matter is dismissed without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 31, 2020

Residential Tenancy Branch