



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-PP, OPC, MNRL, FFL, CNE, RP, OLC

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the Act). The landlord applied for:

- an order of possession for unpaid rent and cause pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for End of Employment (the 1 Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32.

The Landlord attended the hearing via conference call and provided undisputed affirmed testimony. The tenant did not attend.

The hearing was paused until 11:05am to allow the tenant an opportunity to attend and participate in the hearing however the hearing was concluded at 11:56am without the tenant present.

At the outset, the landlord stated that he had received an email on March 5, 2021 from the tenant notifying him that the tenant had vacated the rental unit. The landlord stated that he had an agent attend and confirm that the tenant had vacated the rental unit.

The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via regular mail on January 5, 2021 and that since the package was sent, nothing has been returned.

I accept the undisputed affirmed testimony of the landlord and find that the tenant was served with the notice of hearing package and the submitted documentary evidence via regular mail on January 5, 2021 as per sections 88 and 89 of the Act.

The hearing concluded after 56 minutes with no attendance by the tenant. The landlord confirmed receipt of the tenant's notice of hearing package. As such, the tenant's application is dismissed without leave to reapply.

I also note as the landlord has confirmed that the tenant has vacated the rental unit and the landlord no longer requires an order of possession that the landlord's requests for OPR-PP and OPC were withdrawn by the landlord.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

This tenancy began on October 31, 2010 on a fixed term tenancy ending on October 31, 2011 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated October 23, 2010. The monthly rent was \$775.00 payable on the 1st day of each month.

The landlord stated that the tenant vacated the rental unit and notified the landlord of such via email on March 5, 2021. The landlord stated that no security deposit was paid.

The landlord seeks an amended monetary claim of \$5,690.00 which consists of:

\$675.00	Unpaid Rent, May 2020
\$875.00	Unpaid Rent, June 2020
\$875.00	Unpaid Rent, July 2020

\$875.00	Unpaid Rent, August 2020
\$5.00	Unpaid Rent, January 2021
\$795.00	Unpaid Rent, February 2021
\$795.00	Unpaid Rent, March 2021
\$795.00	Unpaid Rent, April 2021

The landlord provided undisputed affirmed testimony that the tenant failed to pay rent owed as noted above. The landlord clarified that he also seeks unpaid/loss of rent of \$795.00 for April 2021 as the tenant failed to provide any notice to end the tenancy until he received the email dated March 5, 2021 notifying him that the rental unit had been vacated. The landlord stated that his agent attended the rental unit and placed a rental sign advertising it for rent immediately. The landlord stated that as of the date of this hearing the rental unit is still not re-rented.

Analysis and Conclusion

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has provided sufficient evidence that the tenant failed to pay rent owed as claimed, with the exception of April 2021 for \$795.00. Despite the landlord stating that the rental unit was immediately advertised for rent when he received the email notification on March 5, 2021, I find that the landlord's claim for loss of rent of April 2021 to be pre-mature. As such, this portion of the landlord's claim is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The landlord has established a total claim of \$4,795.00.

The landlord is entitled to recovery of the \$100.00 filing fee.

The landlord is granted a monetary order for \$4,895.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, the 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: March 23, 2021

Residential Tenancy Branch