



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, OLC / OPR-DR, OPRM-DR

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The landlord’s application for:

- an order of possession for non-payment of rent pursuant to section 55; and
- a monetary order for unpaid rent in the amount of \$950 pursuant to section 67.

And the tenant’s application for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$0.01 pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:58 am to enable her to call into this teleconference hearing scheduled for 9:30 am. The landlord 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 and I were the only ones who had called into this teleconference.

The landlord testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on February 3, 2021. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. She testified that she had sent the package by registered mail earlier (on January 21, 2021), but due to an administrative error (the details of which are not relevant to this proceeding) that first mailing was not able to be delivered. I find that the tenant was deemed served with this package on February 8, 2021, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Tenant’s Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the tenant bears the onus to prove the parts of her claim that do not relate to cancelling the Notice. As she failed to attend the hearing, I find that she has failed to discharge her evidentiary burden to prove that she is entitled to the orders sought. Pursuant to Rule of Procedure 7.4, she must attend the hearing and present her evidence for it to be considered. As this did not occur, I have not considered any of the documentary evidence submitted by the tenant to the Residential Tenancy Branch in advance of the hearing.

I dismiss the portions of her claim not related to cancelling the Notice, without leave to reapply.

Preliminary Issue – Tenant Vacated Rental Unit

At the outset of the hearing, the landlord testified that the tenant vacated the rental unit on March 3, 2021. She testified that, as such, she no longer required an order of possession.

Accordingly, I dismiss her application for an order of possession without leave to reapply and cancel the Notice.

Preliminary Issue – Amend Landlord's Application to Increase Monetary Claim

At the hearing the landlord sought to further amend her application to include claims for:

- 1) March 2021 rent which she testified remains outstanding;
- 2) compensation for damage caused to the rental unit by the tenant; and
- 3) the loss of ability to generate income from the rental unit for April and May 2021 due to it being in a state unsuitable for rent because of the damage the tenant caused to it.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

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.

In this case, the landlord seeking compensation for unpaid rent that has increased since she applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for March 2021 rent (\$800).

However, the other amendments sought by the landlord could not have reasonably been anticipated by the tenant. The tenant has not received any notice or indication from the landlord prior to this hearing that the landlord would be seeking compensation flowing from damage allegedly caused by the tenant to the rental unit. To allow such an amendment to be made at the hearing would deprive the tenant of an opportunity to respond to these new allegations. Accordingly, I declined to allow the application to be amended to include claims for loss of income or for compensation for damage caused by the tenant to the rental unit. The landlord may bring a further application to seek such relief.

Issues to be Decided

Is the landlord entitled to a monetary order for \$1,750?

Background and Evidence

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

The tenant and the prior owners of the rental unit entered into a written tenancy agreement starting February 25, 2020. Monthly rent was \$800 and was payable on the first of each month. The tenant paid the prior owners a security deposit of \$400 and a pet damage deposit of \$400.

In December 2020, the landlord assumed ownership of the rental unit. She attempted to enter into a new tenancy agreement with the tenant, but the tenant refused. The landlord agreed that the tenancy agreement made between the tenant and the prior

owners applies to the current tenancy. She testified that the prior owners transferred both deposits to her when the rental unit was sold.

The landlord testified that the tenant only paid \$325 in rent for each of January and February 2021. She served the Notice on the tenant on January 7, 2021. The tenant disputed it and continued to reside in the rental unit until March 3, 2021. The landlord testified that the tenant did not provide her with any notice that she would be moving out of the rental unit on March 3, 2021. She testified that the tenant did not pay any rent for March 2021.

In summary, the landlord testified that the tenant is currently in arrears of \$1,750, calculated as follows:

Date	Owed	Paid	Balance
01-Jan-21	\$800		\$800
01-Jan-21		\$325	\$475
01-Feb-21	\$800		\$1,275
01-Feb-21		\$325	\$950
01-Mar-21	\$800		\$1,750

Analysis

Section 26 of the Act states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

Based on the tenancy agreement in evidence, I find that the tenant was obligated to pay monthly rent in the amount of \$800 on the first of every month.

Section 44 of the Act, in part, states:

How a tenancy ends

44(1) A tenancy ends only if one or more of the following applies:

[...]

(d) the tenant vacates or abandons the rental unit;

The tenant vacated the rental unit on March 3, 2021. I find that the tenancy ended on this date. As such, the tenant was obligated to pay rent for the month of March on March 1, 2021. I should note that, since the tenant disputed the Notice, the tenancy was not ended by operation of section 46(5) on the effective date of the Notice.

I accept the landlord's undisputed testimony that the tenant is in arrears of \$1,750, as set out above.

Accordingly, I order the tenant to pay the landlord this amount.

Pursuant to section 72(2) of the Act, the landlord may retain the security and pet damage deposits in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$950, representing the following:

Description	Amount
January arrears	\$475
February arrears	\$475
March arrears	\$800
Credit for deposits	-\$800
Total	\$950

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: April 9, 2021

Residential Tenancy Branch