



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Presidential Management Group
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FFL

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, further to having served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent dated January 11, 2021; and to recover the \$100.00 cost of their Application filing fee.

Two agents for the Landlord, L.A. and S.B. ("Agents"), 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 25 minutes and was monitored throughout this time. The only persons to call into the hearing were the Agents, who indicated that they were 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, were the Agents.

I explained the hearing process to the Agents and gave them an opportunity to ask questions about the hearing process. During the hearing the Agents were given the opportunity to provide their 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 and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agents testified that they served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on February 22, 2021. The Agents 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 Agents in the absence of the Tenant.

Preliminary and Procedural Matters

The Agents provided the Landlord's email address in the hearing. They also confirmed their understanding that the Decision would be emailed to the Landlord and mailed to the Tenant, and any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Agents that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Agents that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The Agents advised that the Tenant vacated the rental unit on April 6, 2021, and that they have re-rented the unit; as such, they confirmed that they no longer seek an order of possession in this matter.

In the hearing, the Agents also indicated that they wished to claim compensation for damages to the rental unit; however, I advised the Agent that they had not applied for this remedy in their Application, and therefore, it would be a surprise to the Tenant and, therefore, administratively unfair. A party must know about the claims in advance of the hearing in order to be able to present a prepared response. As that is not the case before me, I advised the Agents that they may apply for this remedy in a further application, but that it would not be considered in this proceeding.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent confirmed the details in the tenancy agreement, which includes that the fixed-term tenancy began on September 15, 2020, with a monthly rent of \$1,250.00, due on the first day of each month. The Agent confirmed that the Tenant had paid the Landlord a security deposit of \$625.00, and no pet damage deposit, and that the Landlord still holds the Tenant's security deposit. The Agents confirmed that the Tenant

has not given the Landlord her forwarding address in writing, or requested the return of the security deposit.

The Landlord had served the Tenant with a 10 Day Notice that was signed and dated January 11, 2021, it has the rental unit address, it was served by being posted on the rental unit door on January 11, 2021. It had an effective vacancy date of January 20, 2021, which is automatically corrected to January 24, 2021 by section 53 of the Act. The ground for the eviction was that the Tenant failed to pay \$1,275.00 when it was due on January 1, 2021.

The following table reflects the Landlord's evidence of the unpaid rent owing by the Tenant to the Landlord, and which led the Landlord to serve the Tenant with an eviction notice.

Date Rent Due	Amount Owing	Amount Received	Date Received	Amount Owing
Jan 1/21	\$1,250.00	\$0.00		\$1,250.00
Feb 1/21	\$1,250.00	\$0.00		\$1,250.00
March 1/21	\$1,250.00	\$450.00	March 2021	\$800.00
Late fees Jan/21	\$25.00	\$0.00		\$25.00
Late fees Jan/21	\$25.0	\$0.00		\$25.00
Late fees Jan/21	\$25.00	\$0.00		\$25.00
	TOTAL OWING			\$3,375.00

The Tenant did not attend the hearing to dispute these claims.

The Landlord also claimed compensation from the Tenant for unpaid utilities, pursuant to section 46(6) of the Act; however, I could not find among the Landlord's submissions any evidence that the Landlord had provided the Tenant with a written demand for payment of utilities, and further, that they remained unpaid 30 days after this written notice. I, therefore, dismiss this claim with leave to reapply.

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. Pursuant to sections 26 and 67 of the Act, I award the Landlord with recovery of \$3,375.00 in unpaid rent from the Tenant

Section 55(1.1) states that if a landlord's application relates to the landlord's notice to end a tenancy under section 46, and the following circumstances apply:

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice;

then the director must grant an order requiring the payment of the unpaid rent by the tenant.

I find that the 10 Day Notice complies with section 52 of the Act, as to form and content. Further, I uphold the Landlord's 10 Day Notice to end the tenancy, despite the Landlord no longer needing an order of possession for this rental unit. Accordingly, I find that the Landlord may be granted a monetary order pursuant to their Application

In terms of the Landlord's late rent fee, the *Residential Tenancy Act* Regulation (“Regulation”) sets out the allowable fees that can be charged by a landlord:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

. . .

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee. .

[emphasis added]

In this case, the Tenant did not pay rent at all, as opposed to having given cheques with insufficient funds. However, I find that a failure to pay rent equates to a late payment under section 7 of the Regulation. Further, I find that the Regulation authorizes a landlord to impose a \$25.00 fee, as the Landlord has done in this case.

Section 67 of the Act states that "if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party." As a result, and pursuant to sections 26 and 67, I award the Landlord with **\$3,375.00** in compensation from the Tenant.

Given their success, I also award the Landlord with recovery of the **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act. I authorize the Landlord to retain the Tenant's \$625.00 security deposit in partial satisfaction of this award. I grant the Landlord a Monetary Order pursuant to section 67 of the Act for the balance owing by the Tenant to the Landlord in the amount of **\$2,850.00**.

Conclusion

The Landlord is predominantly successful in their claim for compensation from the Tenant in the amount of \$3,375.00 for unpaid rent and late payment fees. The Landlord is also awarded recovery of the \$100.00 Application filing fee for a total monetary award of **\$3,475.00**.

The Landlord has established a monetary claim of \$3,475.00. I authorize the Landlord to retain the Tenant's full security deposit of \$625.00 in partial satisfaction of the claim. The Landlord is granted a Monetary Order under section 67 for the balance due by the Tenant to the Landlord in the amount of **\$2,850.00**.

This Order must be served on the Tenant by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: May 18, 2021

Residential Tenancy Branch