



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL-S, MNDCL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- a monetary order for loss under the Act, the regulation or tenancy agreement, pursuant to section 67;
- an authorization to retain the tenant's security deposit (the deposit), pursuant to section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 11:44 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord and agent AK (the landlord) attended the hearing and were 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, her agent and I were the only ones who had called into this teleconference.

At the outset of the hearing the landlord and agent AK affirmed they understand it is prohibited to record this hearing.

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on February 19, 2021, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision). The landlord served the documents in two packages because they did not fit in a single package.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is

mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on February 24, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord informed me the neighbour of the rental property informed her the tenant vacated the rental unit on February 26, 2021 at night. On March 02, 2021 the landlord inspected the rental unit and confirmed it is vacant.

The application for an order of possession is moot since the tenancy has ended and the tenant left the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. a monetary order for loss?
3. an authorization to retain the tenant's deposit?
4. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is her obligation to present the evidence to substantiate the application.

The landlord affirmed the parties entered into a fixed-term tenancy from April 05, 2020 to March 31, 2021. Monthly rent of \$1,600.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$400.00 was collected and the landlord holds it in trust. The tenant did not provide the forwarding address to the landlord. The tenancy agreement was submitted into evidence. It states electricity and gas are not included in the rent payment.

The landlord stated the tenant did not pay the balance of rent in July 2020 in the amount of \$600.00 and did not pay rent in June, November and December 2020 and January and February 2021. The landlord is claiming for the balance of July rent in the amount of \$600.00, June, November and December 2020, January and February 2021 rent in the monthly amount of \$1,600.00. The total amount of rental arrears is \$8,600.00.

The landlord testified the tenant agreed to pay for 40% of electricity and gas bills from April 05, 2020 to August 31, 2020 and 30% of electricity and gas bills from September 01, 2020 to the end of the tenancy. The landlord submitted into evidence 5 electricity bills, 10 gas bills, and a demand to pay utilities letter. The landlord served the bills and the demand letter to the tenant in person on January 06, 2021 and the tenant did not pay the bills. The total amount in arrears for the tenant's portion of the utilities bills during the tenancy for electricity is \$504.34 and for gas is \$315.83.

The landlord submitted into evidence a monetary order worksheet dated February 08, 2021 indicating a claim in the total amount of \$9,420.17.

Analysis

Section 7 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;

- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

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 the case is on the person making the claim.

Unpaid rent

I accept the landlord's uncontested testimony that the tenancy agreement requires the tenant to pay monthly rent of \$1,600.00 on the first day of the month.

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

Based on the landlord's undisputed testimony and the tenancy agreement, I find the tenant is in rental arrears in the amount of \$8,600.00 for the balance of July 2020 rent (\$600.00) and June, November and December 2020, January and February 2021 rent (\$1,600.00 per month). I award the landlord \$8,600.00 for unpaid rent.

Utilities

I accept the uncontested testimony that the tenant must pay 40% of electricity and gas utilities bills from April 05, 2020 to August 31, 2020 and 30% from September 01, 2020 to the end of the tenancy and that the tenant did not pay his portion of 5 electricity bills in the amount of \$504.34 and 10 gas bills in the amount of \$315.83.

Based on the landlord's uncontested testimony, the 5 electricity and 10 gas bills, I find the tenant breached the tenancy agreement by not paying the electricity and gas utilities bills and the landlord suffered a loss of \$820.17.

As such, I award the landlord \$820.17 in compensation for this loss.

Filing fee and summary

As the landlord was successful in this application, the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, the Residential Tenancy Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to

a landlord may be deducted from the security deposit held by the landlord and the monetary amount or cost awarded to a tenant may be deducted from any rent due to the landlord. Thus, I order the landlord to retain the tenant's deposit of \$400.00 in partial satisfaction of the monetary award granted.

In summary:

Item	Amount \$
Balance of unpaid rent July 2020	600.00
Unpaid rent June, November and December 2020 and January and February 2021 (\$1,600.00 per month)	8,000.00
Utilities	820.17
Filing fee	100.00
Minus deposit	400.00 (subtract)
Total monetary award	9,120.17

Conclusion

Pursuant to sections 38, 26, 67 and 72 of the Act, I authorize the landlord to retain the \$400.00 deposit and grant the landlord a monetary order in the amount of \$9,120.17.

The landlord is provided with this order in the above terms and the tenant must be served with this order. Should the tenant fail to comply with this order, this 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: May 12, 2021

Residential Tenancy Branch