



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, OLC / OPR-DR, OPRM-DR, FFL**

Introduction

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

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,300 pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent dated March 10, 2021 (the “**March Notice**”) pursuant to section 46; and
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:44 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. Two representatives of the landlord attended the hearing (“**PS**” and “**SS**”) 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 PS, SS, and I were the only ones who had called into this teleconference.

PS testified, and SS confirmed, that PS served the tenant personally with the notice of dispute resolution form and evidence on April 28, 2021. I find that the tenant was served with this package in accordance with section 88 and 89 of the Act.

PS and SS both testified that the landlord was not served with the tenant’s application materials and were unaware that the tenant is disputing the March Notice.

Preliminary Issue – Affect of Non-Service and Non-Attendance of Tenant

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, even though the landlord is the respondent to the tenant's application, it bears the onus to proof that the March Notice is valid. The tenant bears the onus to proof that he is entitled to an order that the landlord comply with the Act.

Accordingly, I dismiss without leave to reapply the tenant's application for an order that the landlord comply with the Act.

The fact that the tenant did not serve his application materials on the landlord does not cause me to dismiss his application, in these circumstances. The landlord was prepared to make submissions as to the substance of the tenant's application to cancel the March Notice, as much of the evidence submitted in support of its application relates to the validity of the March Notice. (The landlord relies on a subsequent notice to end tenancy for non-payment of rent issued in April 2021 (the "**April Notice**") as a basis to end the tenancy.)

Preliminary Issue – Name of Landlord

On his application, the tenant listed the landlord as an individual ("**TL**"). TL signed the March Notice. On its application, the landlord SBH (a corporate entity) listed itself as the landlord. SBH is listed as the landlord on the March Notice. PS testified that TL is a former employee of the landlord and was acting as an agent when she signed the March Notice.

The tenancy agreement lists SBH as the landlord.

Accordingly, I amend the tenant's application so that TL's name is replaced with SBH's name as the sole respondent landlord.

Preliminary Issue – Amendment to Landlord's Application

At the hearing the landlord sought to further amend its application to include a claim for May 2021 rent which PS testified remains outstanding.

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 is seeking compensation for unpaid rent that has increased since it first 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 May 2021 rent (\$1,250).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$2,550; and
- 3) recover the filing fee?

Is the tenant entitled to an order cancelling the March Notice?

Background and Evidence

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

The parties entered into a written, fixed term tenancy agreement starting January 1, 2021 and ending January 1, 2022. Monthly rent is \$1,250 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$625, which the landlord holds in trust for the tenant. The tenant continues to reside in the rental unit.

The landlord called its bookkeeper ("RM") as a witness. He testified that the tenant has paid rent as follows

Date	Owed	Paid	Balance
01-Jan-21	\$1,250.00		\$1,250.00
01-Jan-21		\$1,250.00	\$0.00
01-Feb-21	\$1,250.00		\$1,250.00

01-Feb-21		\$1,250.00	\$0.00
01-Mar-21	\$1,250.00		\$1,250.00
10-Mar-21		\$950.00	\$300.00
01-Apr-21	\$1,250.00		\$1,550.00
09-Apr-21		\$250.00	\$1,300.00
01-May-21	\$1,250.00		\$2,550.00
Total	\$6,250.00	\$3,700.00	\$2,550.00

PS testified that the landlord served the tenant with March Notice on March 10, 2021 by posting it on the door of the rental unit. It specified rental arrears of \$500. Beside this amount, the landlord wrote “includes cost to remove chair and sofa”.

PS testified that the landlord served the tenant with April Notice on April 3, 2021 by posting it on the door of the rental unit. It specified rental arrears of \$1,550. PS testified that this amount did not include any amount the landlord claims to be owed for furniture removal. He testified it represented the amount of rent owed under the tenancy agreement only.

Analysis

Based on the tenancy, I find that that the tenant was required to pay the landlord \$1,250 in monthly rent. I accept the testimony of RM as to the amounts of rent paid by the tenant throughout the course of the tenancy. I find that the tenant has failed to pay \$2,550 in rent that is owing under the tenancy agreement.

Based on RM’s testimony, I find that, as of March 10, 2021, the tenant owed \$300 in rental arrears. The March Notice indicates that he owed \$500, including the cost of furniture removal. Such costs are not properly included on a 10-day notice to end tenancy for non-payment of rent. A tenancy may not be ended for failure to pay a fee levied on the tenant by the landlord. According, I find that the March Notice is invalid and of no force or effect.

However, I find that the April Notice is valid as it lists the amount of unpaid rent as \$1,550. RM’s testimony reflects that this was the amount of rent owed as of April 3, 2021.

The tenant has not paid the full amount of arrears listed on the April Notice and has caused the amount of arrears to grow by not paying any rent for the month of May 2021.

Accordingly, I find that the landlord is entitled to an order of possession and to monetary order for the full amount of rental arrears owed (\$2,550).

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit 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 \$2,025, representing the following:

Description	Amount
Rental Arrears	\$2,550.00
Filing Fee	\$100.00
Security Deposit Credit	-\$625.00
Total	\$2,025.00

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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 21, 2021

Residential Tenancy Branch