



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

This proceeding began as a Direct Request Proceeding under the *Residential Tenancy Act* (Act) with the landlords' seeking remedy under the Act. The landlords applied for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 2, 2021 (10 Day Notice), for a monetary order for unpaid rent or utilities, to retain all or a part of the tenant's security deposit, and to recover the cost of the filing fee. The matter was adjourned to a participatory hearing based on an Interim Decision dated March 9, 2021, which should be read in conjunction with this decision.

The participatory hearing began this date, June 7, 2021 at 11:00 a.m. Pacific Standard Time. Landlord AR (landlord) attended the teleconference hearing. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of an Adjourned Dispute Resolution Proceeding dated March 10, 2021 (Notice of Adjourned Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Adjourned Hearing, application and documentary evidence were served on the tenant twice. The first method was by registered mail on March 12, 2021 and then by email on March 15, 2021. A registered mail tracking number was provided in evidence and has been included on the style of cause for ease of reference. The landlord testified that the registered mail package was addressed to the tenant at the rental unit address, mailed on March 12, 2021, and according to the Canada Post registered mail tracking website, the tenant did not pick up the package and it was returned to sender marked "unclaimed". Pursuant to section 90 of the Act, I find the tenant was deemed served as of March 15, 2021 with the Notice of Adjourned Hearing. Given the above, I find this matter to be undisputed by the tenant and the hearing continued without the tenant

present pursuant to Rule 7.1 and Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The landlord was informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The landlord was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlord did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed the email addresses for both parties at the outset of the hearing and stated that they understood that the decision would be emailed to both parties and any orders would be emailed to the landlord only for service on the tenant.

Furthermore, the landlord confirmed that the landlord has deemed the rental unit abandoned as of March 15, 2021 and as a result, is no longer seeking an order of possession. As a result, I will not consider an order of possession.

The landlord testified that in addition to the rent owed for February 2021 as claimed, the tenant has subsequently not paid the rent March 2021. As a result, the landlord requested to amend the application to include rent owed for March 2021. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement as they did not vacate the rental unit until March 15, 2021 and rent was due on March 1, 2021. Therefore, I amend the application pursuant to section 64(3)(c) of the Act to include \$1,650.00 for unpaid March 2021 rent.

Issues to be Decided

- Are the landlords entitled to a monetary order for unpaid rent/utilities or loss of rent/utilities under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit under the Act?
- Are the landlords entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on October 1, 2020. Monthly rent was \$1,650.00 per month and due on the first day of each month, plus utilities. The tenant paid a security deposit of \$825.00 at the start of the tenancy, which the landlords continue to hold.

The landlords' monetary claim of \$1,750.00 is comprised of unpaid rent of \$1,650.00 for February 2021, and the \$100.00 filing fee. In addition, the landlord stated they are seeking loss of March 2021 since filing their application as the tenant continued to occupy the rental unit until March 15, 2021 when possession was returned.

While the landlord asked about damages and unpaid utilities for March, the landlord was advised that they were not part of this claim and as a result, the landlord liberty to apply for those via a separate application. As the landlord confirmed they did not serve the tenant with the amendment for damages and unpaid utilities for March 2021, that the landlord had liberty to apply for those at a later date and that this decision does not extend any applicable timelines.

The landlord stated that the 10 Day Notice was served on February 2, 2021 and that the tenant did not dispute the 10 Day Notice. The effective vacancy date listed on the 10 Day Notice was March 31, 2021. The tenant vacated the rental unit on March 15, 2021 but failed to pay March 2021 rent also.

Analysis

Based on the undisputed documentary evidence and undisputed testimony provided by the landlord during the hearing, and on the balance of probabilities, I find the following.

Claim for unpaid rent and loss of rent – Firstly, as the tenant was served and did not attend the hearing, I find the application of the landlords to be unopposed by the tenant. I accept the disputed testimony of the landlord that the tenant owes \$1,650.00 for unpaid February 2021 rent. In addition, I also grant the landlords \$1,650.00 for unpaid/loss of March 2021 rent of \$1,650.00. Pursuant to section 26 of the Act, a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has breached section 26 of the Act by failing to comply with a standard term of the tenancy agreement, which stipulates that rent is due monthly on the first day of each month. Consequently, I find the landlord has met the burden of proof and I grant the landlord **\$3,300.00** for unpaid rent and loss of rent for February 2021 and March 2021 as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, pursuant to section 72 of the Act. I find the landlord has met the burden of proof and has established a total monetary claim of **\$3,400.00** as a result, comprised of \$3,400.00 in unpaid rent and loss of rent, plus the \$100.00 filing fee.

The landlord is holding a security deposit of \$825.00, which was paid by the tenant at the start of the tenancy and has accrued no interest since the start of the tenancy. As the landlord wants to offset the amount owed with the security deposit, I find that the landlord is entitled to a monetary order and that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit plus \$0.00 interest as follows:

Unpaid rent and loss of rent for February 2021 and March 2021	\$3,300.00
Filing fee	\$100.00
Subtotal	\$3,400.00
<i>(Less tenant's security deposit including \$0.00 interest)</i>	<i>-(\$825.00)</i>
TOTAL BALANCE OWING BY TENANT TO LANDLORDS	\$2,575.00

Pursuant to section 38 and 67 of the Act, I grant the landlord authorization to retain the tenant's full \$825.00 security deposit towards the amount owing as described above. I grant the landlord a monetary order pursuant to section 67 of the Act in the amount of **\$2,575.00** owing by the tenant to the landlord.

Conclusion

The landlords' application is fully successful.

The landlord has established a total monetary claim of \$3,400.00 as indicated above. The landlord is authorized to retain the tenant's full security deposit of \$825.00 in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order under section 67 for the balance owing by the tenant to the landlord in the amount of \$2,575.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The decision will be emailed to both parties. The monetary order will be emailed to the landlords only for service on the tenant.

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: June 10, 2021

Residential Tenancy Branch