



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: OLC, CNR

Landlord: FFL, OPU-DR, OPUM-DR

Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy, pursuant to section 46; and
- an Order for the landlord to comply with the *Act*, regulation, and/or the tenancy agreement, pursuant to section 62

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for Unpaid Rent and Utilities, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent and utilities, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10:11 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord and the landlord's husband 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, the landlord's husband and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was served with this application for dispute resolution via registered mail on May 11, 2021. A Canada Post receipt confirming same

was entered into evidence. I find that the tenant was deemed served with this application for dispute resolution in accordance with sections 89 and 90 of the *Act*. I note that Residential Tenancy Policy Guideline #12 states that where a document is served by registered mail the refusal of the party to accept or pick up the item, does not override the deeming provision

Rule 7.1 of the Residential Tenancy Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Based on the above, in the absence of any evidence or submissions from the tenant I order the tenant's application dismissed without liberty to reapply.

At the start of this hearing the landlord testified that the tenant moved out yesterday, June 6, 2021. I dismiss the landlord's application for an Order of Possession as this tenancy has already ended.

Preliminary Issue- Amendment

The landlord submitted an amendment on June 3, 2021 seeking to increase the amount of rent owed by the tenant. The landlord testified that this amendment was not served on the tenant.

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that 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.

The landlord's original application claimed unpaid rent in the amount of \$800.00. Since filing for dispute resolution, the landlord testified that the amount of rent owed by the tenant has increased to \$2,750.00.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent in the amount of \$2,750.00.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent and utilities, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

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

The landlord provided the following undisputed testimony. This tenancy began on December 1, 2019 and ended on June 6, 2021. Monthly rent in the amount of \$1,300.00 is payable on the first day of each month. A security deposit of \$650.00 was supposed to be paid to the landlord but never was. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The subject rental property is a house with an upper unit and a basement unit, each rented out to different tenants. The tenant resided in the basement unit.

The landlord testified that the tenant owes the following amount of rent for the following months:

- February 2021: \$600.00,
- April 2021: \$200.00,
- May 2021: \$1,300.00, and

- June 2021: \$650.00

The landlord testified that she is only seeking ½ months' rent for June 2021 because the tenant did not reside at the property for the entire month. The total amount of rent sought is \$2,750.00

The landlord testified that pursuant to the tenancy agreement the tenant is required to pay 50% of the utility bill and the upper tenant is required to pay the other 50%. The landlord testified that the tenant got behind in paying the utility bills in the fall of 2020.

The landlord entered into evidence a utility bill with a billing period of October 3, 2020 to December 3, 2020. That bill states that the total amount owing is \$2,662.77. \$885.31 of this bill is from the October 3-December 3, 2020 billing period and the remaining \$1,777.46 is from previous unpaid bills that were not entered into evidence. The landlord testified that the tenant owed \$1,291.00 of the total outstanding balance stated on the October 3, 2020 to December 3, 2020 utility bill and that the tenant only paid \$200.00 of that, leaving **\$1,091.00** outstanding.

The landlord entered into evidence a utility bill with a billing period of December 3, 2020 to February 3, 2021. That bill states that the total amount of new charges is \$1,220.12. The landlord testified that the tenant owes 50% of that bill in the amount of **\$610.06**.

The landlord entered into evidence a utility bill with a billing period of February 3, 2021 to April 3, 2021. That bill states that the total amount of new charges is \$849.21. The landlord testified that the tenant owes 50% of that bill in the amount of **\$424.60**.

The total for all the bills is \$2,125.66. The landlord testified that to help the tenant out, she paid some of the tenant's utility bills and is only seeking \$1,598.04 from the tenant.

Analysis

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,300.00 on the first day of each month. Based on the undisputed testimony of the landlord, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord the following rent:

- February 2021: \$600.00
- April 2021: \$200.00
- May 2021: \$1,300.00
- June 2021: pro-rated rent: $\$1,300.00 \text{ (rent)} \div 30 \text{ (days in June)} = \$43.33 \text{ (daily rate)}$. $\$43.33 \text{ (daily rate)} * 6 \text{ (days in June tenant resided in unit)} = \259.98

I find that the tenant is only responsible for rent on the days the tenant resided in the subject rental property. I note that the landlord remains at liberty to apply for damages including loss of rental income for the remainder of June 2021's rent, if the landlord has sufficient evidence to do so.

Based on the landlord's undisputed testimony and the tenancy agreement entered into evidence, I find that the tenant was required to pay 50% of the utility bills and failed to do so.

I accept the landlord's undisputed testimony that the tenant owes \$1,091.00 in utilities for utilities up to December 3, 2020.

Based on the landlord's undisputed testimony and the utility bills entered into evidence, I find that the tenant owes the landlord an additional \$610.06 for the December 3 2020 to February 3, 2021 utility bill and an additional \$424.60 for the February 3 2021 to April 3, 2021 utility bill. The total amount outstanding in utility bills is \$2,125.66.

I accept the landlord's testimony that she is only seeking \$1,598.04 from the tenant as she gifted the tenant the difference. Pursuant to my above findings, I award the landlord a monetary award in the amount of \$1,598.04.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent	\$2,359.98
Unpaid utilities	\$1,598.04
Filing Fee	\$100.00

TOTAL	\$4,058.02
--------------	-------------------

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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: June 07, 2021

Residential Tenancy Branch