



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPU-DR, MNRL, MNDCL
For the tenant: CNR OLC LRE FFT

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed for compensation or damage under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee, although it was already waived. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 1, 2021 (10 Day Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property, and to recover the cost of the filing fee.

The landlord attended the hearing. The tenant did not attend the hearing. The tenant was provided the Notice of a Dispute Resolution Proceeding dated March 10, 2021 (Notice of Hearing) after filing their application. After the 10-minute waiting period, the tenant's application was **dismissed in full, without leave to reapply**, as the tenant failed to attend the hearing to present the merits of their application.

The landlord testified that they served the tenant with the Notice of Hearing and application by email on March 15, 2021. Under the Act and the Regulation, documents served by email are deemed served 3 days after they are emailed. As a result, I find the tenant was deemed served as of March 18, 2021. As the tenant failed to attend the hearing, I find the landlord's application to be undisputed by the tenant. Pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3, the hearing continued without the tenant present. In addition to the above, the landlord testified that

the amendment for more money owed was served on the tenant by email on March 31, 2021. A copy of the email was submitted in evidence. As a result, I find the tenant was sufficient served with the amendment as of April 3, 2021.

I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules. However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

Firstly, the landlord confirmed that the tenant vacated the rental unit on March 12, 2021 without returning the keys and stole some items and as a result the landlord no longer requires an order of possession. As a result, I will not consider an order of possession further in this matter. The landlord requested to offset any amount owing with the tenant's combined deposits of \$1,950.00, comprise of \$975.00 security deposit and \$975.00 furniture deposit.

Secondly, the landlord confirmed the email addresses for both parties at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. The decision only will be emailed to the tenant.

Thirdly, as the landlord had the filing fee waived, I will not grant the filing fee as it was not paid by the landlord.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord entitled to offset any amount with the combined deposits?

Background and Evidence

A copy of the fixed-term tenancy agreement was submitted in evidence. The tenancy began on August 1, 2020 and was scheduled to revert to a month to month tenancy after July 31, 2021. Monthly rent in the amount of \$1,950.00 is due on the 31st day of the prior month. As described above, the tenant paid a security deposit of \$975.00 and a furniture deposit of \$975.00 at the start of the tenancy, which the landlord continues to hold, which will be referred to as the combined deposits of \$1,950.00.

The 10 Day Notice submitted for my consideration by the landlords is dated March 1, 2021 and has an effective vacancy date of March 10, 2021. As the tenant did not attend the hearing and their application was dismissed without leave to reapply, I consider the 10 Day Notice to be undisputed by the tenant, which I will address further below.

The landlord's amended claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid March 2021 rent	\$1,950.00
2. Unpaid March 2021 utilities	\$100.00
3. Loss of April 2021 rent	\$1,950.00
4. Loss of April 2021 utilities	\$100.00
5. Strata fees x 2	\$700.00
6. Damages	\$1000.00
TOTAL	\$5,800.00

Regarding items 1 and 2, the landlord stated that the tenant attempted to break the fixed-term tenancy by giving notice on February 18, 2021. The landlord stated that the tenant vacated the rental unit on March 12, 2021 without paying \$1,950.00 for March 2021 rent or for utilities for March 2021. The tenancy agreement does not include electricity or heat in the monthly rent. The landlord stated that the tenant's utilities are \$100.00 per month.

Regarding items 3 and 4, the landlord stated that by breaking the fixed-term tenancy, the landlord began to advertise the rental unit as of March 15, 2021 and could not secure a new tenant in time for April 2021 and as a result, suffered a loss of rent of \$1,950.00 plus \$100.00 for utilities.

Regarding item 5, this item was dismissed during the hearing as the landlord attempted to claim for monthly strata fees for the condo which I find the tenant is not liable for as the original tenancy agreement did not include strata fees and that those fees are typically paid by the landlord. As a result, this item was dismissed without leave to reapply due to insufficient evidence.

Regarding item 6, the landlord has claimed \$1,000.00 to replace frayed carpet that was damaged by the tenant and in addition, a transition piece was also missing and that the carpet had to be replaced and could not be repaired. The landlord stated that the damage was not reasonable wear and tear and that the carpet was only 5 years old.

Photo evidence of the damage to the carpet was also provided and a receipt showing \$1,261.00 although the landlord stated they are only claiming for \$1,000.00 of the total cost related to the damage carpet.

In addition to the above, the landlord is also seeking loss of May 2021 rent of \$1,950.00, if they are so entitled as they could not secure a new tenant for May 2021. I will consider this item 7 as a result below.

Analysis

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

Items 1, 2, 3, 4 and 7 - Firstly, I find the landlord's verbal request during the hearing to include May 2021 does not prejudice the tenant as I find the tenant breached the fixed-term tenancy and therefore breached section 45(2) of the Act as the tenancy was not scheduled to revert to a month to month tenancy until after July 31, 2021. I also find that the tenant would be aware or ought to be aware that when breaching a fixed-term tenancy, that they would be responsible for all costs related to loss of rent until such time that a new tenant can occupy the rental unit. In the matter before me, a new tenant could not be found for the months of April and May 2021.

Therefore, I accept the landlord's undisputed testimony that the tenant owes \$1,950.00 in unpaid rent for March, April and May 2021 of \$1,950.00 for each month. Section 26 of the Act requires that a tenant pay rent on the day that it is due in accordance with the tenancy agreement. I find that the tenant breached section 26 of the Act by failing to pay the full amount of rent on the day that it is due as claimed by the landlord. Therefore, I find the landlords have met the burden of proof and is entitled to monetary compensation of **\$6,050.00** comprised of \$1,950.00 for each of the months of March, April and May of 2021, plus \$100.00 in unpaid utilities for March and April of 2021. I do not grant May 2021 utilities as the landlord did not mention them in the hearing and RTB Rule 2.9 states that you cannot divide a claim.

Item 5 – As described above, the strata fees claim of \$700.00 was dismissed without leave to reapply as I find the tenancy agreement did not require the tenant to pay strata fees which are typically paid by the landlord in a condo. Therefore, I find this portion of the landlord's claim fails due to insufficient evidence, without leave to reapply.

Item 6 – I have reviewed the carpet damage photos and the receipt for \$1,261.00 and I find the tenant breached section 37(1) of the Act which does not allow any damage

beyond reasonable wear and tear and I find the frayed carpet and missing transition piece is not reasonable wear and tear for such a short tenancy and that the tenant either purposely damaged the carpet or was negligent. Either way, I find the tenant is liable and I do not apply depreciation to the cost of the carpet as a result of the tenant's actions and/or negligence. Therefore, I find the landlord has met the burden of proof for this item and I grant the landlord **\$1,000.00** as claimed.

As the filing fee was already waived for the landlord, I do not grant it.

I find that the landlord has established a total monetary claim of **\$7,050.00** comprised of \$6,050.00 for items 1, 2, 3, 4 and 7, plus \$1,000.00 for item 6. I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's combined deposits of \$1,950.00, which the landlord continues to hold, and which has accrued \$0.00 in interest to date. I **authorize** the landlord to retain the tenant's full combined deposits of \$1,950.00 in partial satisfaction of the landlord's monetary claim, and 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 **\$5,100.00**.

Conclusion

The tenant's application has been dismissed in full, without leave to reapply.

The landlord was mostly successful with their claim. The landlord has established a total monetary claim of \$7,050.00. The landlord has been authorized to retain the tenant's full combined deposits of \$1,950.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the Act for the balance owing by the tenant to the landlord in the amount of \$5,100.00. 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 tenant is reminded that they could be held liable for all costs related to enforcing the monetary order.

This decision will be emailed to both parties as described above.

The monetary order will be emailed to the landlord only for service on the tenant.

The tenant is cautioned not to breach sections 26, 45(2) or 37(1) of the Act in the future.

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 16, 2021

Residential Tenancy Branch