



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR-PP, MDCL, FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) 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 in the amount of \$3,237.75 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to retain the tenants' security deposit towards any amount owing, and to recover the cost of the filing fee.

The landlord, DP (landlord) and a support person for the landlord, KP (support) attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated March 10, 2021 (Notice of Hearing), application and documentary evidence were considered. The landlord testified that the Notice of Hearing, application and documentary evidence were served on the tenants by personal service at the rental unit on March 13, 2021 at approximately 5:00 p.m., and was witnessed by their father, DP. In addition, the Amended Application dated May 21, 2021 (Amendment) the landlord stated was served by registered mail and by email to the tenants. The email was dated May 21, 2021 and the tenants responded unfavourably according to the landlord on the same date, so the landlord knew they received the Amendment. Based on the above, I find the tenants were duly served on March 10, 2021 with the Application, documentary evidence and Notice of Hearing and were served on May 21, 2021 by email with the Amendment. Given that the tenants did not attend the hearing, I

consider this matter to be undisputed by the tenants and the hearing continued without the tenant present in accordance with Rule 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules).

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 respective 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 tenants.

In addition to the above, the landlord stated that as the tenants vacated the rental unit on March 31, 2021, they no longer require an order of possession. As a result, I will not consider an order of possession further as the landlord has obtained possession back of the rental unit.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit under the Act?
- Is the landlord 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 month to month tenancy began on March 28, 2020. Monthly rent was \$1,200.00 per month and was due on the first day of each month. The tenants paid a \$600.00 security deposit, which the landlord continues to hold, which has accrued \$0.00 in interest under the Act.

The landlord's monetary claim of \$3,237.75 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid February 2020 rent	\$1,200.00
2. Unpaid/loss of March 2020 rent	\$1,200.00
3. Rent arrears for repayment plan (COVID time period)	\$75.00
4. Damages and cleaning costs	\$662.75
5. Filing fee	\$100.00
TOTAL	\$3,237.75

Regarding items 1, 2 and 3, the landlord testified that the tenants failed to pay any rent for February and March of 2020 and still owe \$75.00 for the COVID time period repayment plan.

Regarding item 4, the landlord testified that the tenants left the rental unit damaged and unclean and submitted invoices, video evidence and photo evidence to support that they spent \$318.93 to clean the rental unit to a reasonably clean condition, to repaint damaged walls and to repair a damaged shower track, and to have a key cut for the key that was not returned by the tenants which combined was \$301.28. In addition, the landlord testified that the tenants ruined a toilet seat and that it had to be replaced which cost \$42.54 to repair.

Regarding item 5, the filing fee, I will address that further below.

Analysis

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

As the tenants were served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenants. Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to

deduct all or a portion of the rent.

[Emphasis added]

Section 46(5) of the Act applies and states:

Landlord's notice: non-payment of rent

46(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit to which the notice relates by that date.

[Emphasis added]

Based on the above, I find the tenants breached section 26 and 46(5) of the Act by failing to pay rent as claimed on the date that it was due and failed to vacate the rental unit by February 10, 2021, which was the effective vacancy date listed on the 10 Day Notice, and which was not disputed by the tenants. As a result, I find the landlord's application is fully successful in the amount of \$3,237.75; comprised as claimed above, and also includes the \$100.00 filing fee pursuant to section 67 and 72 of the Act.

I also find the tenants breached section 37 of the Act by failing to leave the rental unit in a reasonably clean condition at the end of the tenancy and by failing to return all rental unit keys.

I authorized the landlord to retain the tenant's \$600.00 security deposit pursuant to sections 38 and 67 of the Act in partial satisfaction of the monetary claim. I grant the landlord a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of **\$2,637.75**.

I caution the tenants not to breach sections 26, 37 and 46(5) of the Act in the future.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$3,237.75 as described above.

The landlord has been authorized to retain the tenant's \$600.00 security deposit.

The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of \$2,637.75. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division). The tenants can be held liable for all costs related to enforcement of the monetary order.

The tenants have been cautioned as described above.

This decision will be sent by email to the parties. The monetary order will be sent by email to the landlord only for service on the tenants.

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 8, 2021

Residential Tenancy Branch