



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, MNDCL, FFL

Introduction

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

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,575 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 1:45 pm in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 pm. The party 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 the landlord's agent ("**RP**") and I were the only ones who had called into this teleconference.

RP testified he served the tenant with the notice of dispute resolution form and supporting evidence package via registered mail sent to the rental unit on May 13, 2021. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with this package on May 18, 2021, five days after the landlord mailed it, in accordance with sections 88, 89, and 90 of the Act.

At the outset of the hearing, RP advised me the landlord received a bank draft for \$1,372 the morning of the hearing (July 12, 2021). He stated that he expected the tenant to call into the hearing to discuss what would be done about balance of the amount claimed. He stated that he was not sure as to the tenant's intentions about staying in the rental unit. At RP's request, I stood down the hearing to allow him to call the tenant to ask the tenant to call into the hearing.

RP returned to the call after five minutes and advised me that he spoke to the tenant. He said that the tenant was at work, and would not be calling in. He said the two of them came to an agreement and that the landlord would withdraw its application for an

order of possession. He indicated that he would like to proceed with an application for the balance of the monetary amount claim and the filing fee.

As the tenant has not called into the hearing, I do not have his confirmation of any agreement has been reached between the parties. As such, I cannot make orders to give effect to any agreement. I can only proceed with the application that has been brought by the landlord (and with which the tenant has been duly served). However, I will permit the landlord to withdraw its application for an order of possession, and such a withdrawal does not prejudice the tenant.

Similarly, as RP has given sworn evidence that the landlord has received a sizable portion of the amount claimed, I will not order that the tenant pay the landlord that amount.

Accordingly, I amend the landlord's application so that the amount of the monetary claim is \$203 (\$1,575 - \$1,372).

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$203; and
- 2) recover the filing fee?

Background and Evidence

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

The parties entered into a written tenancy agreement starting June 1, 2020. Monthly rent is \$1590 (\$1,525 for the rental unit and \$65 for parking). The landlord did not require the tenant to pay a security deposit or pet damage deposit. At some point following the creation of the tenancy agreement, monthly rent was reduced to \$1,550 (\$1,485 for rental unit and \$65 for parking). The tenancy agreement contains the following clause:

NSF Charges

If the rent or any other sum owing to the landlord is not honored at the financial institution upon which it is drawn, the tenant will pay the landlord , in respect of the dishonored payment, the dishonored payment charges charged to the landlord, plus the \$25 fee for late rent, in addition to the sum owing.

RP testified that the tenant provided a cheque for \$1,550 for January 2021 rent. RP testified that this payment did not go through. The landlord provided a copy of its ledger

for the tenant showing this and showing that the tenant was in arrears of \$1,575, representing the unpaid January 2021 rent and a \$25 NSF fee.

The ledger continues to May 1, 2021 and does not show any further arrears or fees incurred by the tenant. RP testified that, aside from the \$1,372 payment received the morning of the hearing, the tenant has made no other payments towards the amount owed.

Analysis

Based on the tenancy agreement, RP's testimony, and the ledger submitted into evidence, I find that the tenant was required to pay \$1,550 in monthly rent. I find that he provided a cheque for \$1,550 representing payment of January 1, 2021 rent to the landlord, and that this cheque did not clear.

I find that the tenancy agreement allows the landlord to charge a \$25 NSF fee. The charging of such a fee is permitted by section 7(1)(d) of the *Residential Tenancy Regulation*.

I accept RP's testimony that the tenant has paid \$1,372 of the arrears (including the NSF fee) owing. As such, I find that the tenant is \$203 in arrears. He must pay that amount to the landlord.

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.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$303, representing the following:

Description	Amount
Rent Arrears (January 2021)	\$1,550.00
NSF Fee	\$25.00
Filing Fee	\$100.00
July 12, 2021 payment	-\$1,372.00
Total	\$303.00

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: July 12, 2021

Residential Tenancy Branch