



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNR-DR, OPR-DR, FFL**

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$3,500 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was reconvened from an *ex parte* direct request proceeding via an interim decision dated April 23, 2021.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's agent ("**RP**") 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 RP and I were the only ones who had called into this teleconference.

RP testified he served that the tenant with the April 23 Interim Decision, the notice of reconvened hearing, and all material submitted in support of the landlord's application via registered mail on April 27, 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 was deemed served with this package on May 2, 2021, five days after RP mailed it, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment

At the hearing, RP sought to amend the landlord's application to include a claim for April and May 2021 rent which he testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

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.

In this case, the landlord is seeking compensation for unpaid rent that has increased since she first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for April and May 2020 rent (\$2,000).

Preliminary Issue – Tenant Vacated Rental Unit

RP also advised me that the tenant vacated the rental unit on or about June 18, 2021. As such, the landlord no longer requires an order of possession. Accordingly, I dismiss this portion of the application, without leave to reapply.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$5,500;
- 2) recover the filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary orders made?

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 the landlord's claims and my findings are set out below.

The landlord purchased the residential property from the prior owner. She took possession on or about September 8, 2020. The prior owner and the tenant entered into a written tenancy agreement starting March 1, 2020. Monthly rent was \$1,000 and was payable on the first of each month. The tenant paid the prior owner a security deposit of \$500. The prior owner transferred this deposit to the landlord at the time of sale. The landlord holds this deposit in trust for the tenant.

RP testified that the tenant is currently in arrears of \$5500, as follows:

Date	Owed	Paid	Balance
01-Dec-20	\$500.00	\$0.00	\$500.00
01-Jan-21	\$1,000.00	\$0.00	\$1,500.00
01-Feb-21	\$1,000.00	\$0.00	\$2,500.00
01-Mar-21	\$1,000.00	\$0.00	\$3,500.00
01-Apr-21	\$1,000.00	\$0.00	\$4,500.00
01-May-21	\$1,000.00	\$0.00	\$5,500.00
Total	\$5,500.00	\$0.00	\$5,500.00

RP testified that in December 2020, the landlord agreed to reduce the tenant's rent, for that month only, to \$500 due to some personal financial struggles the tenant was going through. This reduction was a temporary one, and for the month of December 2020 only.

RP testified that, to date, the tenant has paid no portion of these arrears. The landlord seeks a monetary order against the tenant for this amount.

Analysis

I accept the undisputed testimony of RP in its entirety. I find that the tenant is obligated to pay \$1,000 a month in monthly rent, and that, contrary to section 26(1) of the Act, he failed to do so.

I find that the tenant has failed to pay rent that was due for December 2020 and February, March, April, and May 2021. He is currently \$5,500 in arrears. Accordingly, I order that the tenant pay the landlord \$5,500.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, she may recover their filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$5,100, representing the following:

Description	Amount
Arrears	\$5,500.00
Filing fee	\$100.00
Security deposit credit	-\$500.00
Total	\$5,100.00

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: August 19, 2021

Residential Tenancy Branch