



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

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

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:17 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") 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 agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that she is not recording this dispute resolution hearing.

The agent confirmed the landlord's email address for service of this decision and order.

The agent testified that this tenancy ended pursuant to a previous arbitration. The file number for the previous arbitration is on the cover page of this decision. The agent testified that the tenant moved out of the subject rental property on May 11, 2021. As this tenancy has already ended, I dismiss the landlord's application for an Order of Possession without leave to reapply.

The agent testified that the tenant was served with this application for dispute resolution via registered mail. A registered mail receipt for the above mailing, dated April 22, 2021, was entered into evidence. A delivery confirmation of April 26, 2021 for the above package was also entered into evidence. I find that the tenant was served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

Preliminary Issue- Amendment

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 \$17,600.00. Since filing for dispute resolution, the agent testified that the amount of rent owed by the tenant has increased to \$18,433.87.

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 \$18,433.87.

In the hearing the agent testified that the landlord is also seeking compensation for damage to the subject rental property and for strata fines incurred by the tenant. I find that the tenant could not reasonably have anticipated that the agent would seek to amend the claim in the hearing for damages and strata fines. I therefore decline to amend the landlord's application. The landlord is at liberty to file an application for dispute resolution with the Residential Tenancy Branch for damages to the property and strata fines incurred by the tenant.

Issue to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee 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 agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the agent's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on June 7, 2020 and ended on May 11, 2021. Monthly rent in the amount of \$2,350.00 was payable on the first day of each month. A security deposit of \$1,175.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The agent testified that the tenant has not provided the landlord with a forwarding address.

The agent testified that the tenant owes the following amounts in rent for the following months:

Month	Rent Owning
September 2020	\$1,350.00
October 2020	\$2,350.00
November 2020	\$2,350.00
December 2020	\$2,350.00
January 2021	\$2,150.00
February 2021	\$2,350.00
March 2021	\$2,350.00
April 2021	\$2,350.00
May 1-11, 2021	\$833.87 (pro-rated for 11 days)
TOTAL	\$18,433.87

The agent entered into evidence numerous text messages and emails from the tenant confirming the above testimony of the agent.

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* and the tenancy agreement, I find that the tenant was obligated to pay the monthly rent in the amount of \$2,350.00 on the first day of each month. Based on the undisputed testimony of the agent and the text messages and emails entered into evidence, I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$18,433.87 in unpaid rent from September 1, 2020 to May 11, 2020.

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*.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$1,175.00 in part satisfaction of the landlord's monetary claim for unpaid rent against the tenant.

Conclusion

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

Item	Amount
Unpaid rent	\$18,433.87
Filing fee	\$100.00
Less security deposit	-\$1,175.00
TOTAL	\$17,358.87

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: August 13, 2021

Residential Tenancy Branch