



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-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 non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,500 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 11:15 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord 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 and I were the only ones who had called into this teleconference.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated February 8, 2021, the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted.

The matter then came to a hearing on April 30, 2021. At the hearing, I discovered that the landlord had not served the February 8, 2021 interim decision on the tenant, as ordered. As such, I adjourned the hearing and ordered the landlord to serve the tenant with the required documents. I permitted the landlord to serve the tenant via text message. I issued an interim decision on April 30, 2021 which sets out the full particulars of my order.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:15 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord 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 and I were the only ones who had called into this teleconference.

The landlord testified that he served the tenant via text message (as I ordered in my April 30, 2021 interim decision) with copies of the notice of reconvened hearing, interim decision, notice of direct request proceeding, and all supporting evidence. He submitted screenshots to support this testimony. I find that the tenant has been served with the required documents in accordance with the Act.

Preliminary Issue – Tenant Vacated Rental Unit

The landlord testified about the tenant vacated the rental unit on January 16, 2021. As such, he stated he no longer required an order of possession. Accordingly, and with his consent, I dismissed the landlord's application for an order of possession without leave to reapply

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,500;
- 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 the landlord, 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 parties entered into a written tenancy agreement starting July 1, 2018. AT the start of the tenancy, monthly rent was \$1,900. The tenant paid the landlord a security deposit of \$950, which the landlord continues to hold in trust for the tenant.

The landlord testified that he agreed to temporarily reduce the tenant's rent to \$1,500 for "three or four" months in 2020, due to COVID-19. However, he testified that the tenant continued to pay only \$1,500 in rent after these "three or four" months. The landlord testified he objected to this, but the tenant persisted. The landlord has not brought an application to recover arrears brought about by the tenants recurring underpaying of rent.

The landlord testified that the tenant did not pay any part of her rent for January 2021. He testified that he served her with a 10 Day Notice to End Tenancy for Non-Payment of rent on January 3, 2021, which specified she was in arrears of \$1,500. The tenant did not pay this amount or dispute the notice and vacated the rental unit on January 16, 2021. She did not leave a forwarding address.

The landlord seeks a monetary order of \$1,500 to recover the unpaid rent for January 2021.

Analysis

Section 26 of the Act 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.

The tenant breached this section of the Act and her obligation under the tenancy agreement by not paying rent. Accordingly, I order her to pay the landlord \$1,500 representing unpaid rent for January 2021.

I should note that I accept the landlord's testimony that he only agreed to a temporary rent reduction in 2021. However, as the landlord has only applied for a monetary order for \$1,500, I decline to order that the tenant pay any amount in excess of \$1,500 for arrears.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he 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 \$650, representing the following:

Description	Amount
Rent arrears	\$1,500.00
Filing fee	\$100.00
Security deposit credit	-\$950.00
Total	\$650.00

I order the landlord to serve a copy of this decision and attached monetary order on the tenant. Pursuant to section 71(1) of the Act, I order that the landlord may serve the tenant with these documents by text message, to the two phone numbers listed on the

cover of this decision. I make this order for the same reasons as set out in my interim decision of April 30, 2021.

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 31, 2021

Residential Tenancy Branch