



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-S, 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 and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$1,652 pursuant to section 67;
- 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 9:55 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's property manager ("**RN**") 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 RN and I were the only ones who had called into this teleconference.

RN testified he served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on April 29, 2021. He testified that this package was not retrieved by the tenant and returned to the landlord. He testified that, on June 1, 2021, two residence managers of the landlord attended the rental unit and personally served the tenant. I find that the tenant has been sufficiently served with the required materials in accordance with the Act.

Preliminary Issues – Amendments

At the outset of the hearing, the landlord sought to amendments to the application.

1. Change of address

RN testified that the application contained a typo with regard to the address of the building in which the rental unit is located. The first digit was mistyped and is actually a

“7” rather than the “3” that is on the application. The tenancy agreement, the notice to end tenancy, and the demand letter included in evidence all list the building address as starting with a “7”. I accept that the correct address of the building the rental unit is located in starts with a “7”. I find that this was an innocent mistake and grant the amendment. The correct address is listed on the cover of this decision.

2. Increase in amount of rent sought

RN sought to further amend the application (which deals with arrears up until April 2021) to include a claim for July and August 2021 rent, and remove a claim for much of the preceding months’ rent. He testified that the tenant failed to pay any part of July and August rent (or the NSF fees permitted by the tenancy agreement), and that, on June 26, 2021, the tenant paid \$4,200, lowering his rental arrears to \$72 (there were arrears owing for May and June at the time of the June 26, 2021 payment).

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 it 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 reflect the June 26, 2021 payment, and to include a claim for July and August rent arrears and late payment fees (\$3,292).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$3,292;
- 3) recover the filing fee;
- 4) 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 RN, 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 November 1, 2020. Monthly rent is \$1,585 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$792.50 and a pet damage deposit of \$792.50. The landlord still retains these deposits.

The tenancy agreement authorized the landlord to charge a late payment fee of \$25.

RN testified that, as of February 2, 2021, the tenant was \$3,215 in arrears (rental arrears plus two \$25 late payment fees changes). He submitted a copy of the tenant ledger confirming this.

On February 17, 2021, the landlord served a 10 Day Notice to End Tenancy for Non-Payment of Rent (the "**Notice**") on the tenant by posing it to the door of the rental unit. It specified an effective date of February 27, 2021. The Notice specified the amount of arrears as \$3,165, which were owing as of February 1, 2021. This amount did not include the two late payment fees changes.

On February 24, 2021, the tenant paid the landlord \$1,583. He did not dispute the Notice with the Residential Tenancy Branch the ("**RTB**").

RN testified that the landlord identified the tenant as someone who could benefit from their "RISE" program, which the landlord instituted during the COVID-19 pandemic to set up payment plans for tenants who had fallen behind in their rent, or to (in exceptional circumstances) forgive portions of the arrears. RN testified that the landlord provided the tenant with application materials for this program in March 2021, but the tenant did not complete or return them.

RN testified that, as the tenant did not apply for the program and remained in arrears, the landlord proceeded in applying for an order of possession in late April 2021.

As stated above, RN testified that the tenant paid his arrears down to \$72 on June 26, 2021 but failed to pay any part of July or August rent. As such, the tenant's arrears are \$3,292 (\$3,242 in unpaid rent and \$50 in late payment fees for July and August 2021).

Analysis

I accept the undisputed testimony of RN in its entirety. I find that the tenant was obligated to pay \$1,585 in monthly rent, and that, as of February 17, 2021, he was \$3,165 in rent arrears (excluding two late payment fees). I find that, as of the date of this hearing, the tenant is in arrears of \$3,292 (\$3,242 in unpaid rent and \$50 in late payment fees for July and August 2021).

Section 1 of the Act defines “rent” to exclude “fees prescribed under section 97(2)(k) [regulations in relation to fees]”. Section 7(1)(d) permits the charging of “an administration fee of not more than \$25 for [...] for late payment of rent”, so long as such a fee is provided for in the tenancy agreement.

As such, the late fees are not considered “rent” and the landlord was correct not to include them on the Notice. This differs from what I said to RN at the hearing (where I indicated it was permissible to include late payment fees in with the rental arrears). I was incorrect in the hearing, as I misread “exclude” for “include”. Include this point to correct a misapprehension I may have caused RN. In any event, as the landlord did not include these late payment fees in the amount of rental arrears on the Notice, nothing turns on this point.

I find that the landlord served the tenant with the Notice on February 17, 2021 by posting it on the door of the rental unit. Pursuant to section 90 of the Act, I deem that it was served on February 20, 2021, three days after it was posted. The tenant did not dispute the Notice, nor did he repay the entirety of the arrears within five days of receiving the Notice (that is, by February 25, 2021).

Sections 46(4) and (5) of the Act states:

Landlord's notice: non-payment of rent

46(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(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.

As the Notice is deemed served on February 20, 2021, the tenant must either pay the arrears or dispute the Notice by February 25, 2021. The tenant did neither of these.

I find that the Notice complies with the form and content requirements of section 52. As such, I find that the tenancy is conclusively presumed to have ended on the corrected effective date of the Notice, March 2, 2021 (10 days after it was deemed served).

Accordingly, I issue the landlord an order of possession effective two days after the landlord serves this decision and attached order on the tenant.

As stated above, I find that the tenant is currently \$3,292 in arrears (including \$50 in late fees). Section 26(1) of the Act requires that a tenant pay rent when it is due. The

tenancy agreement requires that the tenant pay a \$25 fee if he is late paying his rent. The tenant did not do either of these. As such, I order that the tenant pay the landlord the full amount of rent arrears and late fees owed (\$3,292).

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

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit and pet damage 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 \$1,807, representing the following:

Description	Amount
Rent arrears	\$3,242
Unpaid late fees	\$50
Filing fee	\$100
Security and Pet Damage Deposit Credit	-\$1,585
Total	\$1,807

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord at 1:00 pm.

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 24, 2021

Residential Tenancy Branch