



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Geo Tech
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: Landlord: OPR-DR, MNR-DR
Tenant: CNR, FFT, OLC

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and

The tenants requested:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

RM (“landlord”) appeared for the landlord in this hearing with the assistance of his daughter, SM. The tenants did not attend this hearing, although I left the teleconference hearing connection open until 9:48 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 9:30 a.m. The landlord was given a full opportunity to be heard, to present sworn 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. During the hearing, I also confirmed from the online teleconference system that the landlord, landlord’s daughter, and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any submissions from the tenants in this hearing, their entire application is dismissed without leave to reapply.

The landlord gave sworn testimony that on July 10, 2021, copies of the Application for Dispute Resolution hearing package ('Application') and evidence were served to the tenants by way of registered mail. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenants deemed served with copies of the landlord's application and evidence on July 15, 2021, 5 days after mailing.

At the outset of the hearing, the landlord confirmed that the tenants had moved out, and no longer required an Order of Possession as all parties have vacated the rental unit. Accordingly, the landlord's application for an Order of Possession is cancelled.

Although the landlord had applied for a Monetary Order of \$2,550.00 in their initial claim for unpaid rent, since they applied another \$1,550.00 in rent has become owing that was not included in the original application for the month of July 2021. RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. On this basis, I have accepted the landlord's request to amend their original application from \$2,550.00 to \$4,100.00 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This fixed-term tenancy began on November 1, 2020, and was to end on October 31, 2021. Monthly rent was set at \$1,550.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$775.00, which the landlord still holds.

The landlord testified that they had served the tenants with a 10 Day Notice for Unpaid rent on June 16, 2021 for an effective date of June 26, 2021. The landlord testified that the tenants had only paid \$550.00 in rent for May 2021, and did not pay any rent for June 2021. In addition to the unpaid rent, the landlord was also assessed a \$200.00 fine by the strata for a bylaw infraction which involved the tenants' alleged failure to remove garbage for the assigned parking stall. The landlord provided the email confirming the fine.

The landlord testified that after serving the tenants with the 10 Day Notice he did not receive any further rent payments, and the tenants ceased communication. The landlord testified that on July 23, 2021 he had received an email from strata about noise complaints from the rental unit. The landlord hired a property manager, who attended the rental unit after giving proper notice, and discovered that the tenants had vacated and sublet the rental unit to other parties. The landlord testified that they had contacted the police, and the parties had since vacated the rental unit.

The landlord is seeking a monetary order for unpaid rent in the amount of \$1,000.00 for May 2021, and \$1,550.00 for each of the months of June and July 2021. The landlord is also applying to recover the \$200.00 strata bylaw infraction fine.

Analysis

Section 26 of the Act, in part, states as follows:

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 landlord provided undisputed evidence in the hearing that the tenants failed to pay part of the rent for May 2021, and the entire monthly rent for June and July 2021. I find

that the rental unit was occupied by the tenants or by other occupants the tenants had allowed inside the rental unit until July 2021. Therefore, I find that the landlord is entitled to \$4,100.00 in arrears for the above period.

The landlord is also seeking recover of the \$200.00 bylaw fine. I find that the landlord had provided sufficient evidence to support that the tenants had caused the landlord to be issued the \$200.00 fine, and accordingly, I allow the landlord this monetary order for these losses.

The landlord continues to hold the tenants' security deposit of \$775.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in partial satisfaction of the monetary claim

Conclusion

I dismiss the tenants' entire application without leave to reapply.

I issue a \$3,525.00 monetary Order in favour of the landlord under the following terms.

Item	Amount
Unpaid Rent for May 2021	\$1,000.00
Unpaid Rent for June 2021	1,550.00
Unpaid Rent for July 2020	1,550.00
Fine	200.00
Recovery of Filing Fee	-775.00
Total Monetary Order	\$3,525.00

The tenants must be served with this Order as soon as possible. Should the tenants 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: October 15, 2021

Residential Tenancy Branch