



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPR-PP, MNRL-S, MNDCL-S, FFL**

Introduction

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

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord was represented by their agent (the "landlord"). The tenant was represented by an agent who appeared for the sole purpose of requesting an adjournment of the proceedings. The tenant did not attend this hearing which lasted approximately 15 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

At the outset of the hearing the landlord said this tenancy has ended and withdrew the portion of their application seeking an Order of Possession.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent on July 29, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that

the tenant is deemed served with the landlord's materials on August 3, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

Preliminary Issue – Adjournment Request

At the outset of the hearing the tenant's agent requested that the hearing be adjourned. The agent testified that the tenant is at work during this time. While the agent provided dates and times that the tenant would be available, these were times outside of the hours when the Branch schedules dispute resolution hearings. The agent said they had no knowledge of the issues in this dispute, whether the application was served on the respondent and had no authorization to speak on the tenant's behalf for this application.

The landlord did not consent to the hearing being adjourned and rescheduled. The landlord said they have attempted to work with the tenant in the past to resolve the matters under dispute but have been unsuccessful.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I find that there is little evidence in support of the tenant's request for an adjournment. Their agent said they were instructed to attend the hearing 20 minutes prior to the scheduling starting time and request an adjournment. While the agent provided times that the tenant would be available to attend a dispute resolution hearing the times provided are outside of the scheduled hearing times of the Branch and not appropriate times for a reconvened hearing.

The agent had no knowledge of when the tenant became aware of their inability to attend the hearing and what steps they have taken prior to the hearing date.

Under the circumstances I find that the tenant has not met the criteria established for granting an adjournment. The tenant provided their agent with little information and details as to the circumstances leading to this adjournment request. I find the dearth of information before me, the nature of the claim and the past failure to resolve this matter leads me to conclude that an adjournment would not be appropriate, and it does not result in a breach of the principles of natural justice or procedural fairness to proceed with the hearing. The tenant's request for an adjournment is therefore, dismissed.

Issue(s) to be Decided

Is the landlord entitled to a monetary claim as sought?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on February 1, 2020. Monthly rent is \$1,340.00 payable on the first of each month. A security deposit of \$670.00 was paid at the start of the tenancy and is still held by the landlord.

The landlord submitted the tenancy ledger showing an arrear as at the date of the hearing of \$1,458.08 arising from various shortfalls in rent payments, NSF charges and transaction fees.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied with the evidence of the landlord that monthly rent for this tenancy was \$1,340.00 and the tenant failed to pay the full rent required under the tenancy agreement for several months. I further accept that the landlord incurred transaction costs and NSF fees due to some attempts for payment by the tenant being dishonored. I find on a balance of probabilities that the total arrear for this tenancy is \$1,458.08 as indicated on the tenant ledger. Accordingly, I issue a monetary award in the landlord's favour in that amount.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$888.08, representing the arrear for this tenancy and filing fee less the security deposit. 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: November 16, 2021

Residential Tenancy Branch