



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SCHOOL STREET APARTMENTS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant's application: CNR FFT
Landlords' application: MNRL-S FFL

Introduction and Analysis

This hearing dealt with an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 19, 2021 (10 Day Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, and to recover the cost of the filing fee. The landlord applied for an order of possession based on the 10 Day Notice and for a monetary order for \$5,746.00 for unpaid rent or utilities and to recover the cost of the filing fee and to retain the tenant's security deposit towards any amount owing.

The tenant was provided with a copy of the Notice of a Dispute Resolution Proceeding document dated September 8, 2021 (Notice of Hearing). The tenant; however, did not attend the teleconference hearing set for November 9, 2021 at 1:30 p.m. Pacific Standard Time. The phone line remained open for 27 minutes and was monitored throughout this time. The only persons to call into the hearing was the principal of the corporate landlord, ME (landlord) and the building owner, TG (owner). I have confirmed that file records support that the tenant did not make any attempt to cancel the hearing prior to the hearing.

Following the 10-minute waiting period, the application of the tenant was **dismissed without leave to reapply** as the tenant failed to attend the hearing to present the merits of their application or at the very least cancel their scheduled hearing in advance of the hearing. This is pursuant to Rule 7.1 and 7.3 of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). The landlord did attend the hearing and was ready to proceed.

Preliminary and Procedural Matters

The landlord and owner were informed at the start of the hearing that recording of the dispute resolution is prohibited under RTB Rule 6.11. The landlord and owner were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the landlord and owner were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The landlord and owner did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the landlord confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenant provided their email address in their application, the decision will also be emailed to the tenant.

Issues to be Decided

1. Is the landlord entitled to a monetary order under the Act?
2. What should happen to the tenant's security deposit under the Act?
3. Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on February 1, 2021 and was scheduled to revert to a month-to-month tenancy after January 31, 2022. The landlord testified that the tenant vacated the rental unit and returned the rental unit keys on September 21, 2021.

The landlord is seeking the following monetary claim for unpaid rent/loss of rent:

1. April 2021 unpaid rent of \$1,600.00
2. July 2021 unpaid rent of \$1,600.00
3. August 2021 unpaid rent of \$1,600.00
4. September 2021 unpaid rent of \$1,600.00

TOTAL unpaid rent = \$6,400.00

The landlord also stated that even though the tenant has failed to provide a written forwarding address, they want to offset the amount owed with the tenant's \$800.00 security deposit. The landlord is also claiming the filing fee of \$100.00.

The landlord testified that the tenant issued many cheques that bounced and that as of the date of the hearing the tenant owes \$6,400.00 in unpaid rent. The landlord also confirmed that the tenant was served with a 10 Day Notice for Unpaid Rent or Utilities dated August 19, 2021 on August 19, 2021 via personal service. The landlord testified that the tenant has not paid any amount of rent since being served with the 10 Day Notice.

Analysis

Based on the undisputed documentary evidence before me and the undisputed testimony of the landlord and owner provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, the effective vacancy date listed on the 10 Day Notice was left blank, which I find automatically corrects under section 53 of the Act to August 29, 2021. Secondly, the tenant did not attend the hearing to present evidence that rent was paid. Thirdly, section 55(1.1) of the Act applies and states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

[emphasis added]

Given the above and considering that I find the 10 Day Notice complies with section 52 of the Act, I grant the landlord **\$6,400.00** in unpaid rent/loss of rent.

As the landlord has been successful, I grant the landlord the **\$100.00** filing fee pursuant to section 72 of the Act.

I find the landlord has established a total claim of \$6,500.00 comprised of unpaid rent/loss of rent of \$6,400.00 plus the \$100.00 filing fee. **I authorize** the landlord to retain the tenant's \$800.00 security deposit, which has accrued \$0.00 in interest under

the Act, in partial satisfaction of the landlord's monetary claim pursuant to section 62(3) of the Act.

I grant the landlord a monetary order for the balance owing by the tenant to the landlord in the amount of **\$5,700.00** pursuant to sections 67 and 72 of the Act.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord has established a total monetary claim of \$6,500.00 as indicated above and has been authorized to retain the tenant's full security deposit of \$800.00 towards the amount owing. The landlord has been granted a monetary order for the balance owing by the tenant to the landlord in the amount of \$5,700.00.

This decision will be emailed to both parties.

The monetary order will be emailed to the landlord only for service on the tenant. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant is cautioned that they can be held liable for all costs related to enforcing the monetary order.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 10, 2021

Residential Tenancy Branch