



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR-PP, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

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

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 11:10 a.m. to enable the tenants to participate in this scheduled hearing for 11:16 a.m. The landlord 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. During the hearing, I also confirmed from the online teleconference system that the landlord 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

The landlord testified that the tenants were emailed the landlord's application for dispute resolution hearing package on July 21, 2021, and that the tenants confirmed service by replying "got it" on July 24, 2021. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the landlord's application and evidence package. The tenants did not submit any evidence for this hearing.

The landlord's agent confirmed at the beginning of the hearing that the tenants had moved out on October 4, 2021, and that they no longer required an Order of Possession. Accordingly, this portion of the landlord's application was cancelled.

Although the landlord had originally applied for a monetary order for unpaid rent for the months of May 2021 through to July 2021, since they applied another \$2,000.00 in rent has become owing that was not included in the original application. 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 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 monetary compensation for unpaid rent?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This month-to-month tenancy began in December 2019, with monthly rent currently set at \$1,000.00, payable on the first of the month. The landlord had collected a security deposit in the amount of \$500.00, which the landlord still holds.

The landlord testified in the hearing that a previous hearing was held where a settlement was agreed to by both parties on December 7, 2020. Both parties had agreed that the tenants would pay a lump sum of \$600.00 on December 8, 2020, and then equal instalments of \$500.00 starting on January 1, 2021 until the remaining \$3,000.00 was paid. The landlord was provided a monetary order for these amounts.

The landlord testified that the tenants were still responsible for paying the monthly rent as required by the Act and tenancy agreement, but stopped paying rent in May 2021. The landlord testified that the tenants owe the monthly rent for the months of May 2021 through to September 2021, totalling \$5,000.00. The landlord testified that the tenants moved out on October 4, 2021, but the landlord is not seeking a monetary order for the October rent at this time.

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 at this hearing as the tenants did not attend. I accept the landlord's testimony that the tenants did not pay rent for the months of May 2021 through to September 2021. On this basis, I allow the landlord to recover the unpaid rent for these months totalling \$5,000.00.

As the landlord was successful with his application, I allow the landlord to recover the filing fee paid for this application.

The landlord continues to hold the tenants' security deposit of \$500.00. 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

The landlord cancelled their application for an Order of Possession as the tenants had moved out.

I allow the landlord's monetary claim as set out in the table below. The landlord is issued a monetary order in the amount of \$2,812.50. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' security deposit in satisfaction of the monetary claim.

Unpaid Rent for May 2021 through to September 2021	\$5,000.00
Filing Fee	100.00
Less Deposit Held by Landlord	-500.00
Total Monetary Order	\$4,600.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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 9, 2021