



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant JG and the landlord attended the hearing. The landlord was represented by agent NS. Witness for the landlord AM also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

Preliminary Issue – Service

The landlord affirmed she served the notice of dispute resolution proceeding and the evidence by registered mail on September 10, 2021 and the notice of hearing, the interim decision and new evidence by registered mail on September 23, 2021. The packages were mailed to the rental unit. The tracking numbers are recorded on the cover page of this decision.

Tenant JG confirmed receipt of the September 23, 2021 package.

Based on the landlord's convincing testimony and the tracking numbers provided, I find the landlord served the tenants in accordance with section 89(2)(b) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail, tenants RP and JG are deemed served the notice of dispute resolution proceeding and the evidence on September 15, 2021 and tenant RP is deemed served the notice of hearing, the interim decision and new evidence on September 28, 2021.

Tenant JG affirmed she could not serve her response evidence because she has mental health issues, and she was confused. The tenant affirmed she would like to be able to provide her response evidence.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

I asked the tenant to explain why she could not serve her response evidence since September 23, 2021. The tenant affirmed the rental unit next-door to her unit was invaded and she has lung health issues. The tenant affirmed she vacated the rental unit on November 01, 2021 and became homeless. Later the tenant affirmed she moved to a friend's house.

Rule of Procedure 6.1 states the arbitration will conduct the hearing "in accordance with the Act, the Rules of Procedure and principles of fairness".

Rule of Procedure 3.17 states:

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. **The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.** Both parties must have the opportunity to be heard on the question of accepting late evidence.

(emphasis added)

Based on the tenant's vague testimony, I find the tenant understands what this application is about and that the tenant failed to prove why she was not able to serve her response evidence.

Preliminary Issue – Amendments

The landlord applied for a monetary order for unpaid rent of August 2021 in the amount of \$1,400.00. The landlord affirmed the tenant paid August, September and October 2021 rent and that the tenant vacated the rental unit on November 04, 2021. The landlord sought to amend her application for unpaid rent to include the unpaid rent from November 01 to 04, 2021 in the amount of \$140.00.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$140.00.

The landlord sought to amend her application for a monetary order for loss under the Act. The landlord did not serve the amendment form (RTB form 42).

Rule of Procedure 4.1 and Policy Guideline 23 require changes to the application to be made through the amendment process.

Thus, pursuant to Rule of Procedure 4.1, I do not accept the landlord's amendment for loss under the Act.

Preliminary Issue – Vacant Rental Unit

Both parties agreed the tenants vacated the rental unit.

The application for an order of possession is moot since the tenancy has ended and the tenants vacated the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the application.

Both parties agreed that monthly rent of \$1,400.00 was due on the first day of the month. At the outset of the tenancy a security deposit of \$550.00 was collected and the landlord currently holds it in trust.

The landlord is claiming unpaid rent from November 01 to 04, 2021 in the amount of \$140.00.

The landlord affirmed the tenant moved out on November 04, 2021 in the morning and did not pay rent on November 01, 2021. Witness AM testified the tenant moved out on November 04, 2021.

Tenant JG stated she moved out on November 01, 2021 and that she has a receipt for the moving service. Later the tenant said she removed her belongings from the rental unit on November 04, 2021.

Analysis

Section 44(1)(d) of the Act states: "A tenancy ends only if one or more of the following applies: the tenant vacates or abandons the rental unit."

Based on the testimony offered by the landlord, tenant JG and witness AM, I find the tenants vacated the rental unit on November 04, 2021, as this is the date that the tenants removed their belongings from the rental unit. Thus, I find the tenancy ended on November 04, 2021, per section 44(1)(d) of the Act.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act.

I accepted both parties' uncontested testimony that the tenants did not pay rent on November 01, 2021.

Section 37 of the Act states: "Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends."

I note the landlord applied for unpaid rent from November 01 to 04, 2021.

I accept the landlord's uncontested testimony that the tenant vacated the rental unit in the morning of November 04, 2021. As the tenant vacated the rental unit before 1:00 P.M. on November 04, 2021, the tenant must pay rent from November 01 to 03, 2021.

Per section 26(1) of the Act, I order the tenant to pay \$140.00 for unpaid rent from November 01 to 03, 2021 ($\$1,400.00 / 30 \times 3$).

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

In summary, the landlord is entitled to \$240.00.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain \$240.00 from the tenants' security deposit in total satisfaction of the monetary award.

The landlord must address the balance of the security deposit in accordance with section 38 of the Act.

Conclusion

Per sections 26 and 72 of the Act, I award the landlord \$240.00 and authorize the landlord to retain \$240.00 from the tenants' security deposit in total satisfaction of the monetary award.

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 24, 2021