



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: **MNR-DR, OPR-DR, FFL**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent (“Ten-Day Notice”) pursuant to sections 46 and 55;
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

SD, agent, attended for the landlord (“the landlord”). The landlord had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

The tenants (“the tenant”) did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an added 10 minutes to allow the tenant the opportunity to call. The teleconference system showed only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant was provided.

Service of Documents

As the tenant did not attend the hearing, the landlord provided affirmed testimony that the landlord served each tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on August 30, 2021 and deemed received by the tenant under section 90 of the *Act* five days later, that is, on September 4, 2021.

The landlord supplied the Canada Post Tracking Numbers and a copy of receipts in support of service. Further to the landlord's testimony and supporting documents, I find the landlord served each tenant with the Notice of Hearing and Application for Dispute Resolution on September 4, 2021 pursuant to sections 89 and 90.

Preliminary Issue – Tenant Vacated

The landlord testified the tenant vacated the unit on October 31, 2021. Accordingly, the landlord withdrew the request for the Order of Possession.

Preliminary Issue – Increase in Landlord's Claim

The landlord requested an amendment to the landlord's application to increase the monetary order requested from \$3,458.50 to \$10,136.50. The landlord testified the amendment is to include additional outstanding rent for the months from July 23, 2021 when the application was filed until October 31, 2021 when the tenant moved out.

Section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include outstanding rent from the tenant the dispute was filed and to take into account payments on outstanding rent made by the tenant. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to increase the landlord's overall claim to \$10,136.50.

Preliminary Issue – Amendment re Security Deposit

The landlord requested an amendment to the landlord's application to request that the landlord may apply the security deposit of \$765.00 held by the landlord to any monetary award granted pursuant to section 72.

The landlord testified the tenant paid the landlord a security deposit of \$765.00 at the start of the tenancy which the landlord holds. The tenant has not given the landlord permission to apply the security deposit to outstanding rent.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to request that the security deposit be applied to any monetary award.

Summary of Landlord's Claim

The landlord requested a Monetary Order as follows:

ITEM	AMOUNT
Outstanding rent	\$10,136.50
Filing fee	\$100.00
(Less security deposit)	(\$765.00)
TOTAL	\$9,371.50

Issues:

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background

The landlord provided uncontradicted testimony as the tenant did not attend the hearing.

The landlord submitted a copy of the tenancy agreement and provided the following details about the background of the tenancy:

ITEM	DETAILS
Type of tenancy	Fixed Term (End date: September 30, 2021)
Date of beginning	Oct 31, 2018
Date of ending	October 31, 2021
Monthly rent payable on 1 st	\$1,699.50
Security deposit	\$765.00
Pet deposit	0
Date of application	July 23, 2021

A condition inspection was conducted on moving in. The tenant vacated the unit October 31, 2021 without providing notice and no inspection took place in the presence of the tenant.

The landlord testified the tenant was in arrears of rent of \$10,136.50 when they moved out which is outstanding. The landlord submitted a supporting tenant ledger. The landlord requested authorization to apply the security deposit to the award as well as reimbursement of the filing fee.

The landlord requested a Monetary Order as follows:

ITEM	AMOUNT
Outstanding rent	\$10,136.50
Filing fee	\$100.00
(Less security deposit)	(\$765.00)
TOTAL	\$9,371.50

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

In this section reference will be made to the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and the *Residential Tenancy Policy Guidelines*.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement.

Section 7(1) of the *Act* provided that if a landlord or tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

To claim for damage or loss, the claiming party bears the burden of proof on a balance of probabilities; that is, something is more likely than not to be true. The claimant must establish four elements.

1. The claimant must prove the existence of the damage or loss.
2. Secondly, the claiming party must that the damage or loss stemmed directly from a violation of the agreement or a contravention on the part of the other party.
3. Once those elements have been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

4. Finally, the claimant has a duty to take reasonable steps to reduce, or mitigate, their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In this case, the onus is on the landlord to prove the landlord is entitled a claim for a monetary award.

I have considered all the evidence given by the landlord.

Considering the evidence and testimony, I find the landlord has met the burden of proof on a balance of that the tenant was in arrears of rent when they moved out in the amount claimed. I find the landlord is entitled to monthly rent as claimed. I accept the landlord's evidence as to the outstanding rent owing by the tenant. I grant a monetary award to the landlord for **\$10,136.50**.

As the landlord has been successful in this matter, I award the landlord reimbursement of the filing fee for \$100.00. I authorize the landlord to apply the security deposit to the monetary award.

ITEM	AMOUNT
Outstanding rent	\$10,136.50
Filing fee	\$100.00
(Less security deposit)	(\$765.00)
TOTAL	\$9,371.50

In summary, I grant the landlord a Monetary Order of **\$9,371.50**

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$9,371.50**

This Order must be served on the tenant. If the tenant fails to comply with this Order the landlord may file the order in the Provincial Court (Small Claims) to be 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: December 16, 2021

Residential Tenancy Branch