



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century Group Lands Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFT, MNRT, RP, RR, OLC, CNR-MT**

MNR-DR, OPR-DR, FFL, MNDL-S

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (the “Act”).

The tenant applied for:

- Authorization to recover the filing fee from the other party pursuant to section 72
- An order to recover the cost of emergency repairs made by the tenant during the tenancy pursuant to section 33;
- An order for repairs to be made to the unit, site or property pursuant to section 32;
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55; and
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to section 66.

The landlord applied for:

- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67;
- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- Authorization to recover the filing fee from the other party pursuant to section 72; and
- A monetary order for damages caused by the tenant, their guests to the unit, site or property and authorization to withhold a security deposit pursuant to sections 67 and 38.

The landlord was represented at the hearing by property manager, ES. The tenant was represented at the hearing by her agent/daughter, ES. As both parties were present, I sought confirmation of service of documents. The tenant's agent advised that she did not serve the landlord with her application for dispute resolution as her mother had moved out of the rental unit. Pursuant to section 62(4), I dismissed the entirety of the tenant's application without leave to reapply as the tenant's application no longer discloses a dispute that may be determined under Part 5 of the Act. The only issue I dismiss with leave to reapply is for the tenant to seek recovery of the cost of emergency repairs made during the tenancy.

The tenant denies receipt of the landlord's application for dispute resolution. The landlord testified it was sent via registered mail to the tenant's residential address at the time, the rental unit in question, on September 10, 2021. The tracking number for the mailing is recorded on the cover page of this decision. The tenant's agent argues that the landlord ought to have known the tenant was not residing at the rental unit at the time the Notice of Dispute Resolution Proceedings was served but provided no evidence of providing the landlord with written notice that correspondences should be sent elsewhere. As a result, I deem the landlord's application for dispute resolution sufficiently served on September 15, 2021, five days after it was sent by registered mail, pursuant to sections 89 and 90 of the Act.

The tenant acknowledges receiving the landlord's amendment seeking compensation for damages to the rental unit and additional rent on December 9, 2021. As Rule 4.6 of the Residential Tenancy Branch Rules of Procedures requires amendments to be received by the respondent at least 14 days prior to the hearing, I dismissed the landlord's amendment seeking compensation for damages with leave to reapply. The application seeking additional rent would be considered during this hearing pursuant to Rule 4.2 as this could be reasonably anticipated by the tenant.

As the tenancy has already ended and the tenant has vacated the rental unit, the landlord confirmed she no longer requires an Order of Possession. I make a finding pursuant to section 44(1)(d) that the tenancy ended and dismiss the landlord's application seeking an Order of Possession.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Can the landlord recover the filing fee?

Background and Evidence

The landlord testified the tenancy began in May of 2015 and a security deposit of \$425.00 was collected by the landlord which the landlord continues to hold. At the end of the tenancy, rent was \$950.00 per month.

On August 1, 2021, the tenant failed to pay rent of \$950.00. A 10 Day Notice to End Tenancy for Unpaid Rent/Utilities was served upon the tenant, but the landlord acknowledges there was an error in the notice stating the outstanding arrears should have stated \$950.00 instead of \$970.00. The tenant never paid the August rent after being served with the notice to end tenancy, nor did the tenant pay September or October rent. The landlord testified the tenant advised her on October 9, 2021 that the tenant had vacated the rental unit.

The tenant's agent acknowledges rent was not paid for August, September and October. The tenant justified the reason for withholding rent was because the landlord didn't do repairs to the unit that the tenant felt was needed.

Analysis

Section 26 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, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In other words, the tenant has no right to withhold rent from the landlord. If the tenant felt repairs were required, the tenant should have made an application seeking those repairs or compensation while continuing to pay rent. The consequences for not paying rent are eviction and financial liability for outstanding arrears.

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

I am satisfied that monthly rent in the amount of \$950.00 was not paid for the months of August and September and the first 9 days of October. Consequently, the landlord is entitled to a monetary order as follows:

Item	Amount
August rent	\$950.00
September rent	\$950.00

9 days rent for October	\$275.80
Total	\$2,175.80

As the landlord's application was successful, the landlord is also entitled to recover the filing fee in the amount of \$100.00.

The landlord continues to hold the tenant's security deposit in the amount of \$425.00. In accordance with the offsetting provisions of section 72, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary order.

Item	Amount
Monetary order	\$2,175.00
Filing fee	\$100.00
Less security deposit	(\$425.00)
Total	\$1,850.80

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$1,850.00. 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: December 22, 2021

Residential Tenancy Branch