



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL; CNR, LAT, OLC, LRE

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") 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 her application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated August 17, 2021 ("10 Day Notice"), pursuant to section 46;
- authorization to change the locks to the rental unit, pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement, pursuant to section 62; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

The tenant did not attend this hearing, which lasted approximately 24 minutes. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The hearing began at 9:30 a.m. and ended at 9:54 a.m. I monitored the teleconference line throughout this hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord's agent and I were the only people who called into this teleconference.

The landlord's agent stated that he was a property manager for the landlord company named in this application. He said that the landlord company was a property manager for the owner. He confirmed that he had permission to represent the landlord company and the owner at this hearing. He confirmed his name, spelling, and the rental unit address. He provided an email address for me to send this decision to the landlord after the hearing.

At the outset of this hearing, I informed the landlord's agent that he was not permitted to record this hearing, as per Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The landlord's agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlord's agent. He had an opportunity to ask questions, which I answered. He confirmed that he was ready to proceed with this hearing. He did not make any adjournment or accommodation requests.

Preliminary Issue – Dismissal of Landlord's Application

At the outset of this hearing, the landlord's agent stated that the tenant vacated the rental unit on November 30, 2021, and the landlord did not require an order of possession against the tenant. I informed him that this portion of the landlord's application was dismissed without leave to reapply. He confirmed his understanding of same.

The landlord's agent was unable to provide sufficient testimony as to how and when the landlord served the landlord's application to the tenant. He initially indicated that it was sent on November 1, 2021, by registered mail. He then stated that it was served in person. When I informed him that the notice of hearing was dated September 29, 2021, and it was required to be served by October 2, 2021, as per the RTB email sent to the landlord on September 29, 2021, he stated that he did not have the information to confirm the correct service date and method.

I notified the landlord's agent that since he was unable to prove service of the landlord's application to the tenant, as required, and the tenant was not present to confirm service, the landlord's application to recover the \$100.00 filing fee was dismissed without leave to reapply. He confirmed his understanding of same.

The landlord's application for a monetary order for unpaid rent is addressed below in the tenant's application.

Preliminary Issue – Dismissal of Tenant's Application

The landlord's agent stated that he received a copy of the tenant's application for dispute resolution and notice of hearing.

Rule 7.3 of the RTB *Rules of Procedure* provides as follows:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

In the absence of any appearance by the tenant, I order the tenant's entire application dismissed without leave to reapply. I informed the landlord about my decision verbally during this hearing.

Pursuant to section 55 of the *Act*, if I dismiss the tenant's application to cancel a 10 Day Notice, the landlord is entitled to an order of possession, provided that the notice meets the requirements of section 52 of the *Act*.

As noted above, an order of possession was not issued to the landlord because the landlord stated that he did not require one, since the tenant moved out.

Section 55(1.1) of the *Act* states the following:

55(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.

Effective on March 25, 2021, the landlord is entitled to a monetary order for unpaid rent without filing a separate application. The tenant filed his application on August 27, 2021. As noted above, the tenant's application to cancel the 10 Day Notice was dismissed without leave to reapply.

I find that the landlord's 10 Day Notice complies with section 52 of the *Act*. The landlord's agent confirmed that the notice indicates rent of \$1,744.60 was due on August 1, 2021, with an effective move-out date of September 1, 2021. The tenant claimed in his application that he received the notice on August 23, 2021, by way of registered mail. The landlord's agent stated that the notice was served to the tenant on August 17, 2021, by way of registered mail, and provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. The landlord stated that the above rent was still unpaid by the tenant, as of the date of this hearing.

Issue to be Decided

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

Background and Evidence

The landlord stated the following facts. This tenancy began on May 17, 2019. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month. A security deposit of \$875.00 and a pet damage deposit of \$875.00 were paid by the tenant and the landlord continues to retain both deposits. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant failed to pay rent of \$1,744.60 for August 2021, and \$1,750.00 per month from September to November 2021, totalling \$6,994.60. The landlord seeks a monetary order of \$6,994.60.

Analysis

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord provided undisputed evidence that the tenant failed to pay rent of \$6,994.60 total from August to November 2021. Therefore, I find that the landlord is entitled to \$6,994.60 in rental arrears from the tenant.

The landlord continues to hold the tenant's security and pet damage deposits totalling \$1,750.00. No interest is payable on the deposits over the period of this tenancy. Although neither party made an application in relation to the security deposit, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security and pet damage deposits, totalling \$1,750.00, in partial

satisfaction of the monetary award. I issue a monetary order in the landlord's favour for the balance of \$5,244.60.

Conclusion

I order the landlord to retain the tenant's security and pet damage deposits, totalling \$1,750.00, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$5,244.60 against the tenant. 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.

Both parties' applications are dismissed without leave to reapply.

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: January 07, 2022

Residential Tenancy Branch