



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Highpark Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant: CNR

For the landlord: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for cancellation of the 10 day Notice to End Tenancy for unpaid Rent or Utilities (the Notice), pursuant to section 46 of the Act.

The landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:55 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by manager DC (the landlord), attended the hearing and 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. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party affirmed he understands 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 of the tenant's application

The tenant's notice of hearing was issued on December 20, 2021 and the hearing was scheduled for January 13, 2021. The landlord confirmed receipt of the tenant's notice of hearing by mail on January 04, 2022.

Based on the landlord's testimony, I find the tenant served the notice of hearing in accordance with section 89(1)(c) of the Act.

Preliminary Issue – Service of the landlord's application

The landlord's notice of direct request proceeding was issued on January 12, 2022. The landlord affirmed he mailed the direct request proceeding notice and the evidence by registered mail on January 13, 2021 to the rental unit's address (the tracking number is on the cover page of this decision).

Based on the landlord's testimony, I find the landlord served the notice of direct request proceeding and the evidence on January 13, 2022, 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 the tenant is deemed to have received the materials on January 18, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

The landlord affirmed the January 13, 2022 hearing did not happen. The landlord played a voicemail message received from the Residential Tenancy Branch on January 14, 2022 informing that the tenant's application and the landlord's direct request application were crossed and that the hearing will happen on January 20, 2022. The RTB's officer stated that the notice of hearing for both applications will be emailed by the RTB to the parties and that the parties do not need to serve the notice of hearing for the January 20, 2022 hearing.

Preliminary Issue – Vacant Rental Unit

At the outset of the hearing the landlord informed me the neighbour of the rental unit informed him on January 14, 2022 the tenant vacated the rental unit on January 12, 2022 at night. On January 15, 2022 the landlord inspected the rental unit and confirmed it is vacant.

The applications for an order of possession and for cancellation of the Notice are moot since the tenancy has ended and the tenant left the rental unit.

The landlord affirmed that when he served the materials, he was not aware that the tenant moved out.

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 under the Notice and the application for cancellation of the Notice.

Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$1,400.00 in unpaid rent to include an additional \$1,421.00 for the unpaid rent of January 2021.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. 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 \$2,821.00.

Issues to be Decided

Is the landlord entitled to:

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

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, 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 party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on November 01, 2019 and ended on January 12, 2022. Monthly rent was \$1,400.00 in December 2021 and increased to \$1,421.00 in January 2020, due on the first day of the month. The tenancy agreement was submitted into evidence. It indicates monthly rent was \$1,400.00 and the landlord did not collect a

security or a pet damage deposit. The landlord affirmed he served the notice of rent increase in accordance with the Act.

The landlord affirmed he served the Notice by registered mail on December 04, 2021 (the tracking number is recorded on the cover page of this decision). A copy of the December 04, 2021 Notice was submitted into evidence. It indicates the tenant did not pay rent in the amount of \$1,400.00 due on December 01, 2021.

The landlord is claiming for \$1,4000 in unpaid rent for December 2021 and \$1,421.00 for January 2022, as the tenant did not pay rent in December 2021 and January 2022. A direct request worksheet was submitted into evidence.

Analysis

Based on the landlord's convincing testimony and the tenancy agreement, I find that the parties agreed to a tenancy and the tenant was obligated to pay the monthly rent in the amount of \$1,400.00 on the first day of each month until December 01, 2021 and \$1,421.00 since January 01, 2022.

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 the Act.

Based on the landlord's undisputed testimony, the tenancy agreement, the Notice and the direct request worksheet, I find the tenant did not pay the rent in accordance with section 26(1) of the Act and owes rent to the landlord in the amount of \$1,400.00 for December 2021 and \$1,421.00 for January 2022.

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

In summary, the landlord is entitled to \$2,921.00.

Conclusion

Pursuant to sections 26 and 72 of the Act, I grant the landlord a monetary order in the amount of \$2,921.00.

The landlord is provided with this order in the above terms and 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: January 21, 2022

Residential Tenancy Branch