



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNR, CNC, FFT**

OPR-DR, MNR-DR, FFL

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:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 46 and 55;
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord applied for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55;
- A monetary order for unpaid rent, by direct request, pursuant to sections 26 and 67;
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant attended the hearing and the landlord was represented at the hearing by its counsel, TG. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s application for dispute resolution however the tenant did not acknowledge service of the landlord’s application for dispute resolution.

Landlord’s counsel directed my attention to the proof of service documents uploaded to the dispute resolution system which indicates he sent it via registered mail to the tenant at his residential address on October 21, 2021. The tracking number for the mailing is

recorded on the cover page of this decision. Landlord's counsel submits that the item went unclaimed by the tenant and that the package was returned to his office. Pursuant to sections 89 and 90 of the *Act*, I deem the application for dispute resolution served upon the tenant on October 26, 2021, five days after it was sent via registered mail

Preliminary Issue

The parties agree that the tenant moved out of the rental unit on February 1, 2022. Pursuant to section 62(4) of the *Act*, I dismiss the tenant's application seeking to dispute the notices to end tenancy and the landlord's application seeking an Order of Possession as both issues are no longer disputes that may be determined under Part 5 of the *Act*.

Issue(s) to be Decided

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

Is the landlord entitled to additional rent for the time after the tenant moved out?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on January 1, 2020 with rent set at \$6,130.00 payable on the first day of each month. A security deposit of \$2,750.00 and a pet damage deposit of \$2,750.00 was collected from the tenant which the landlord continues to hold.

The landlord's counsel provided a spreadsheet of arrears which the tenant acknowledges is accurate. The spreadsheet is reproduced here.

Month and date rent was due	Rent amount owing	Amount of partial payment(s) received	Date of partial payment(s)	Balance rent owed
April 1st, 2020	\$6130.00	\$1700.00	April 28, 2020/May 19, 2020.	\$4430.00
May 1st, 2020	\$6130.00	\$1700.00	May 06, 2020/May 21, 2020	\$4430.00
June 1st, 2020	\$6130.00	\$1700.00	May 29, 2020/Jun 02,	\$4430.00

			2020	
July 1st, 2020	\$6130.00	\$5500.00	Jun 29-30, 2020/Aug 18,2020	\$630.00
August 1st, 2020	\$6130.00	\$5500.00	Aug 3,2020/Aug 21,2020	\$630.00
September 1st, 2020	\$6130.00	\$5500.00	Aug 31, 2020/ Sept 2, 2020/ Sept 8 2020.	\$630.00
October 1st, 2020	\$6130.00	\$5500.00	Sep 30, 2020/Oct 1, 2020.	\$630.00
November 1st, 2020	\$6130.00	\$5500.00	Nov 2, 2020	\$630.00
December 1st, 2020	\$6130.00	\$5500.00	Nov 30, 2020	\$630.00
January 1st, 2021	\$6130.00	\$5500.00	Jan 4, 2021	\$630.00
February 1st, 2021	\$6130.00	\$5500.00	Jan 27, 2021	\$630.00
March 1st, 2021	\$6130.00	\$5500.00	March 1st, 2021	\$630.00
April 1st, 2021	\$6130.00	\$5500.00	March 29, 2021	\$630.00
May 1st, 2021	\$6130.00	\$5500.00	May 3, 2021	\$630.00
Additional Repayment	N/A	\$1000.00	Sep 7, 2021	\$ -1000.00
Additional Repayment		\$1500.00	October 1, 2021.	\$ -1500.00

The landlord acknowledges the tenant made an additional payment not reflected on the spreadsheet, of \$1,500.00 made on November 1, 2021. From June 1 to November 30, 2021, the tenant paid his rent in full, however the tenant did not pay rent for the months of December and January. The tenant moved out on February 1, 2022. Both parties acknowledge these facts.

Based on this information, the following is added:

Month and date rent was due	Rent amount owing	Amount of partial payment(s) received	Date of partial payment(s)	Balance rent owed
Additional Repayment		\$1500.00	November 1, 2021	-\$1500.00

December 1, 2021	\$6130.00			\$6130.00
January 1, 2022	\$6130.00			\$6130.00

The landlord seeks additional rent from February 1, 2022, the move-out date until the date of today's hearing, February 11, 2022. The landlord justifies this additional award due to the fact that the tenant and his family have not completely removed all their belongings. Landlord's counsel submits the pro-rated amount for this period totals \$2,408.21.

The tenant testified that the items there are being moved out as fast as he can, given the fact that he is working full time and needs time to remove the remainder of his belongings.

Analysis

Section 7 of the *Act* states: 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The parties are in agreement with the arrears in rent as specified in the landlord's spreadsheet. As such, I calculate the arrears in rent up until February 1, 2022 total **\$28,480.00**. I award the landlord a monetary order in that amount pursuant to section 67 of the *Act*. I also award the landlord the filing fee of **\$100.00** as the landlord was successful in their application. The tenant's filing fee will not be recovered.

The landlord continues to hold the tenant's security deposit and pet damage deposit in the sum of **\$5,500.00**. In accordance with the offsetting provisions of section 72 of the *Act*, the landlord may retain the entire amount in partial satisfaction of the monetary order. The landlord is awarded a monetary order in the amount of **\$23,000.00**.

Residential Tenancy Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent] is provided as a resource for landlords and tenants to understand the issues likely to be relevant in disputes around rent at the end of a tenancy agreement.

Part B of the guideline states:

B. Overholding tenant and compensation

Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant

continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA).

Section 55(1.1) of the *Act* allows an arbitrator to grant compensation for rent in situations where a tenant disputes a landlord's notice to end tenancy for unpaid rent and the tenant is unsuccessful. In this situation, however, the landlord does not seek "rent" as contemplated under section 55(1.1), or compensation under section 57 for occupancy of rental unit after the tenancy ended. Instead, the landlord seeks compensation for the tenant's failure to remove all his belongings at the end of the tenancy.

Part D of PG-3 states:

D. Loss of rent due to damage

When a tenant vacates a rental unit or manufactured home site, they must leave it reasonably clean and undamaged except for reasonable wear and tear (section 37 of the RTA and section 30 of the MHPTA). If a tenant does not comply with this requirement and the premises are un-rentable because of this, then in addition to compensation for the damage to the property or for cleaning, the landlord can also seek compensation for loss of rent. The landlord is required to mitigate this loss by completing the cleaning or repairs in a timely manner.

I find the tenancy ended on February 1, 2022, pursuant to section 44(1)(f) of the *Act*, and the tenant is not liable for paying rent beyond that date. The nature of the additional compensation sought by the landlord falls under sections 7 and 67 of the *Act* and is not laid out in the landlord's original application for dispute resolution by direct request. Rule 2.2 of the Rules of Procedure state that the claim is limited to what is stated in the application and rule 6.2 states the hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. I find that the issue of additional compensation for the tenant's failure to remove belongings at the rental unit after the tenancy ended was not sought in the landlord's application and consequently the tenant was not prepared to have the issue adjudicated upon.

Accordingly, I find the landlord's application seeking compensation for the period of February 1 to February 11, 2022 was not properly before me and I decline to adjudicate upon it. Should the landlord seek this additional compensation, the landlord is at liberty to file an application for dispute resolution and have it properly brought before an arbitrator for adjudication.

Conclusion

Pursuant to section 47(1)(f), I find the tenancy ended on February 1, 2022. Consequently, the landlord's application for an order of possession and the tenant's

application to dispute the notice to end tenancy are both dismissed without leave to reapply pursuant to section 62(4).

I issue a monetary order in the landlord's favour in the amount of **\$23,000.00**. 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: February 11, 2022

Residential Tenancy Branch