



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of rent pursuant to section 55; and
- a monetary order for unpaid rent, in the amount of \$4,060 pursuant to section 67.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlord's agent ("**KF**") 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 Dispute Resolution Proceeding. I used the teleconference system to confirm that KF and I were the only ones who had called into the hearing.

KF testified she served that the tenant with the notice of dispute resolution package and supporting documentary evidence via registered mail on September 30, 2021. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with these documents in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment

At the hearing KF sought to amend the landlord's application to include a claim for October 2021 to February 2022 rent (inclusive) which she testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application 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, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since it first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for October 2021 to February 2022 rent arrears (\$4,953).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$9,013;
- 3) retain the security deposit in partial satisfaction of the monetary order made?

Background and Evidence

While I have considered the documentary evidence and the testimony of KF, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting October 1, 2019. Monthly rent was \$985, but increased to \$999 on January 1, 2022. Rent is payable on the first of each month. The tenant paid the landlord a security deposit of \$492.50, which the landlord continues to hold in trust for the tenant. The tenancy agreement submitted into evidence indicates that there is an addendum, but this was not entered into evidence. KF was unsure as to the terms of the addendum.

KF testified that the tenant has not paid any rent for February, June, August, September, October, November, & December 2021 and January & February 2022. She submitted the landlord's ledger showing the tenant's payments as follows:

Date	Owed	Paid	Balance
01-Feb-21	\$985	\$0	\$985
01-Mar-21	\$985	\$985	\$985
01-Apr-21	\$985	\$985	\$985
01-May-21	\$985	\$985	\$985
01-Jun-21	\$985	\$0	\$1,970
01-Jul-21	\$985	\$985	\$1,970
01-Aug-21	\$985	\$0	\$2,955

01-Sep-21	\$985	\$0	\$3,940
01-Oct-21	\$985	\$0	\$4,925
01-Nov-21	\$985	\$0	\$5,910
01-Dec-21	\$985	\$0	\$6,895
01-Jan-22	\$999	\$0	\$7,894
01-Feb-22	\$999	\$0	\$8,893
Total	\$12,833	\$3,940	\$8,893

The ledger also included four \$30 charges marked “NSF return (Fee)”. The tenancy agreement entered into evidence did not include any term which authorized the collection of such fees (although the addendum may have included such a term). KF stated that the landlord was willing to waive entitlement to collect such fees (which require explicit authorization in the tenancy agreement to charge).

On July 29, 2021, the landlord served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent (the “**Notice**”) by posting it to the door of the rental unit. It listed the effective date as August 12, 2021. The Notice specified arrears as \$2,030. The ledger shows that this amount represents unpaid February and June rent plus two \$30 NSF fees.

The tenant did not dispute the Notice.

Analysis

I accept the undisputed testimony of KF in its entirety. Based on the tenancy agreement submitted into evidence I find that monthly rent was \$985 up until December 1, 2021. I accept KF’s testimony that it was increased to \$999 as of January 1, 2022.

Based on the ledger and KF’s undisputed testimony I find that as of February 1, 2022 the tenant is \$8,893 in rental arrears. I order the tenant to pay the landlord this amount, per section 67 of the Act.

I accept that as of July 29, 2021, the tenant was \$1,970 in arrears.

I find that the landlord served the tenant with the Notice on July 29, 2021 by posting it on the door of the rental unit. Per section 90 of the Act, the tenant is deemed served with it three days later. I have reviewed the Notice and find it meets with the form and content requirements of section 52 of the Act.

The tenant did not dispute the Notice within five days of being deemed served with it or at all. As such, per section 46(5) of the Act, she is conclusively presumed to have accepted the that the tenancy ended on the effective date of the Notice. As such, I issue an order of possession effective days after the landlord serves it on the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$8,400.50, representing the following:

Description	Amount
Rental Arrears	\$8,893.00
Security Deposit Credit	-\$492.50
Total	\$8,400.50

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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 4, 2022

Residential Tenancy Branch