



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNRL-S, MNDCL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession 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 this application, pursuant to section 72 .

While the landlord's agent, TE ("landlord") attended the hearing by way of conference call, the tenant did not. I waited until 11:10 a.m. to enable the tenant to participate in this scheduled hearing for 11:00 a.m. The landlord's agent 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. During the hearing, I also confirmed from the online teleconference system that the landlord's agent and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The landlord confirmed that they understood.

The landlord testified that the tenant was served with the landlord's application for dispute resolution hearing package on December 9, 2021 by way of registered mail. The landlord provided a tracking number and receipt in their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's application and evidence on December 14, 2021, five days after its registered mailing.

The landlord's agent confirmed at the beginning of the hearing that the tenant had moved out on December 20, 2021 and that they no longer required an Order of Possession. Accordingly, this portion of the landlord's application was cancelled.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to recover their filing fee for this application?

Background and Evidence

The landlord testified regarding the following facts. This tenancy began on December 1, 2020, with monthly rent in the amount of \$1,550.00.00 payable on the first day of each month. The landlord holds a security deposit in the amount of \$774.00 for this tenancy. The tenant moved out on December 20, 2021.

The landlord served the tenant with the 10 Day Notice on November 2, 2021. The landlord testified that the tenant owes \$6,200.00 in outstanding rent, and has not paid any rent since the 10 Day Notice was served. The landlord is seeking a monetary order for the unpaid rent, as well as recovery of the filing fee. The landlord is also seeking a further monetary order in the amount of \$100.00 for a legal fee that is outstanding.

Analysis

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

26 (1) 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.

The landlord provided undisputed evidence at this hearing as the tenant did not attend. I accept the landlord's testimony that the tenant owes \$6,200.00 in outstanding rent. On this basis, I allow the landlord to recover the unpaid rent in that amount.

In consideration of the \$100.00 "legal fee", it is unclear as to what this outstanding amount is for. It appears that the landlord was previously granted the recovery of a filing fee for a direct request decision dated August 2021, and this may be a duplicate claim. As I am unable to determine what this "legal fee" pertains to, I dismiss this portion of the landlord's application with leave to reapply.

As the landlord was successful with his application, I allow the landlord to recover the filing fee paid for this application.

The landlord continues to hold the tenant's security deposit of \$775.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

The landlord cancelled their application for an Order of Possession as the tenant had moved out.

I allow the landlord's monetary claim as set out in the table below. The landlord is issued a monetary order in the amount of \$5,525.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's security deposit in satisfaction of the monetary claim.

Unpaid Rent	\$6,200.00
Filing Fee	100.00
Less Deposit Held by Landlord	-775.00
Total Monetary Order	\$5,525.00

The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: March 24, 2022

Residential Tenancy Branch