



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, PSF, OLC, LRE, MNDCT, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice) pursuant to section 46;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, pursuant to section 62;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- a monetary order for compensation for damage or loss under the Act, the Regulation or tenancy agreement, pursuant to section 67; and
- an authorization to recover the filing fee for this application, under section 72.

Both parties attended the hearing. The landlords were assisted by articling student SC (the landlord) and counsel RT. Witness AK for the tenant also attended. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand 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."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that

each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that section 55 (1.1) of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord under section 46 of the Act, I must consider if the landlord is entitled to a monetary order if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Preliminary Issue - Tenant's claims dismissed

At the outset of the hearing both parties agreed the tenancy ended on January 15, 2022.

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.

Accordingly, I order the tenant's application for the cancellation of the Notice, an order for the landlords to provide services and facilities, an order for the landlords to comply with the Act and an order to restrict or suspend the landlord's right of entry dismissed without leave to reapply, as those claims are moot.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the monetary order for unpaid rent is not related to the tenant's other claims to warrant that they be heard together.

I exercise my discretion to dismiss the tenant's other claims with leave to reapply.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claim and my findings are set out below.

Both parties agreed monthly rent was \$2,300.00. The amount of \$1,150.00 was due on the first day of the month and \$1,150.00 was due on the fifteenth day of the month.

The landlords affirmed they hold a security deposit (the deposit) of \$1,150.00. The tenant affirmed the deposit is in the amount of \$1,250.00.

The landlords confirmed receipt of the tenant's forwarding address in writing on February 28, 2022. The landlords have not submitted an application claiming against the deposit.

Both parties agreed the landlord served and the tenant received the Notice in person on December 16, 2021.

The tenant submitted a copy of the December 16, 2021 Notice. It indicates the tenant did not pay rent in the amount of \$2,335.00 due on December 15, 2021. The effective date is December 26, 2021.

The landlords are claiming \$3,485.00 for the balance of November 15, 2021 rent, December 2021 and *pro rata* January 2022 rent from January 01 to 15, 2022.

Both parties agreed the tenant paid rent on November 15, 2021 in the amount of \$1,115.00. The tenant affirmed the landlords verbally forgave the balance of November 15, 2021 rent in the amount of \$35.00.

The landlords affirmed they did not forgive the balance of November 15, 2021 rent in the amount of \$35.00. The landlords affirmed the amount of \$2,335.00 on the Notice is for the balance of November 15, 2021 in the amount of \$35.00 and the unpaid rent due on December 01 and 15, 2021 (\$1,150.00 x 2).

Both parties agreed the tenant did not pay rent due on December 01 and 15, 2021 and January 01, 2022.

The landlord's written submission states: "The landlord also claims for a monetary order for compensation, and to keep the damage deposit."

Analysis

Based on both parties uncontested testimony, I find the tenancy ended on January 15, 2021, in accordance with section 44(1)(d) of the Act.

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.

I accepted the undisputed testimony that the tenant paid \$1,115.00 on November 15, 2021 and did not pay rent due on December 01 and 15, 2021 and January 01, 2022.

Based on the landlord's more convincing testimony and the Notice, I find the landlords did not forgive the balance of November 15, 2021 rent in the amount of \$35.00.

I find the form and content of the Notice complies with section 52 of the Act, as it is signed by the landlord TC, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

Per sections 26(1) and 55(1.1) of the Act, I award the landlords \$3,485.00 for the balance of November 15, December 01 and 15, 2021 and January 01 to 15, 2022 rent.

Deposit

Based on the landlords' more convincing testimony, I find the landlords received a deposit in the amount of \$1,150.00.

Section 38(1) of the Act requires the landlord to either return the tenant's deposits in full or file for dispute resolution for authorization to retain the deposit 15 days after the later of the end of a tenancy or upon receipt of the tenant's forwarding address in writing.

The landlord received the forwarding address in writing on February 28, 2022. The landlords retained the deposits and did not submit an application for dispute resolution.

In accordance with section 38(6)(b) of the Act, as the landlords did not repay the deposit and did submit an application seeking an authorization to retain the deposit, the landlords must pay the tenant double the amount of the deposit.

Residential Tenancy Branch Policy Guideline 17 states the tenant is entitled to double the deposits if the landlord claimed against the deposits when her right to do so has been extinguished under the Act:

Unless the tenant has specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit:

-if the landlord has not filed a claim against the deposit within 15 days of the later of the end of the tenancy or the date the tenant's forwarding address is received in writing;

Under these circumstances and in accordance with section 38(6)(b) of the Act, I find the tenant is entitled to \$2,300.00 (double the \$1,150.00 deposit).

Filing fee and set-off

The tenant applied to cancel the Notice and vacated the rental unit on January 15, 2022. The tenant must bear the cost of the filing fee, as the tenant was not successful.

The tenant is awarded \$2,300.00. The landlords are awarded \$3,485.00.

Residential Tenancy Branch Policy Guideline 17 sets guidance for a set-off when there are two monetary awards:

1. Where a landlord applies for a monetary order and a tenant applies for a monetary order and both matters are heard together, and where the parties are the same in both applications, the arbitrator will set-off the awards and make a single order for the balance owing to one of the parties. The arbitrator will issue one written decision indicating the amount(s) awarded separately to each party on each claim, and then will indicate the amount of set-off which will appear in the order.

Thus, the landlords are awarded \$1,185.00.

Conclusion

Per sections 26 and 55 of the Act, I award the landlords \$1,185.00. The landlords are provided with this order in the above terms and the tenant must be served with this order. 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: March 23, 2022

Residential Tenancy Branch