



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-MT, OLC, MNDCT, LRE, PSF, AAT / OPL, OPR, MNRL-S, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application 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;
- an order of possession for the landlord’s use of the residential property pursuant to section 55;
- a monetary order for non-payment of rent in the amount of \$3,400 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ application for:

- an order to allow access to or from the rental unit or site for the tenants or the tenants’ guests pursuant to section 30;
- the cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order that the landlord provide services or facilities required by law pursuant to section 65;
- more time to make an application to cancel the Notice pursuant to section 66; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$50,000 pursuant to section 67.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:30 am in order to enable the tenants to call into the hearing scheduled to start at 11:00 am. The landlord’s agent (“**PH**”) 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 PH and I were the only ones who had called into the hearing.

The notices of reconvened hearing were delivered to the parties by the Residential Tenancy Branch (the “**RTB**”) along with the Interim Decision via email. The PH testified that she received both the notice of reconvened hearing and the Interim Decision from the RTB.

PH testified that the landlord served the tenants with additional documentary evidence on March 3, 2022 personally. She provided a signed and witnessed statement confirming this service. I find that the tenants have been served with the landlord’s documentary evidence in accordance with the Act.

Procedural History

This matter was reconvened from a prior hearing on November 12, 2021 before a different arbitrator. The presiding arbitrator an interim decision setting out the reasons for the adjournment on November 22, 2022 (the “**Interim Decision**”).

In the Interim Decision, the presiding arbitrator noted that the tenants vacated the rental unit on October 31, 2021 and dismissed all parts of the tenants’ application except for the monetary order and recovery of filing fee. He also dismissed the portions of the landlord’s application for orders of possession.

The Interim Decision also recorded the fact that the tenants waived entitlement (pursuant to RTB Rule of Procedure 2.8) to any amount of \$35,000 of their monetary claim, so that the RTB would have jurisdiction over this matter.

Preliminary Issues

1. Effect of Tenants’ Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As such, the tenants bear the onus to establish the facts necessary to prove their claim. As they failed to attend the hearing, I find that they have failed to discharge their evidentiary burden to prove that they are entitled to the order sought. Pursuant to Rule of Procedure 7.4, they (or their agent) must attend the hearing and present their evidence for it to be

considered. As this did not occur, I have not considered any of the documentary evidence submitted by the tenants to the RTB in advance of the hearing.

I dismiss the tenants' application, without leave to reapply.

The landlord bears the onus to establish the facts necessary to prove his claim. The tenants' non-attendance does nothing to change this.

2. Amendment of Landlord's Application

At the hearing PH sought to amend the landlord's application to include a claim for September and October 2021 rent 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 he first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenants. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for September and October 2021 rent (\$3,400).

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$6,800;
- 2) recover the filing fee; and
- 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 the PH, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's and my findings are set out below.

The parties entered into an oral tenancy agreement on June 1, 2020 to rent the upper suite in a single-detached home. Monthly rent was \$1,700 plus hydro. The tenants paid the landlord a security deposit of \$850, which the landlord continues to hold in trust for the tenants.

On June 16, 2021, the landlord served the tenants with a two month notice to end tenancy for landlord's use, which the tenants disputed. However, the tenant vacated the rental unit on October 31, 2021, before the matter came to a hearing.

PH testified that the tenants did not pay any rent for July, August, September, or October 2021. She testified that the landlord did not pay the tenants an amount equal to one month's rent pursuant to section 51(1) of the Act. She testified that the tenants are currently in rental arrears of \$6,800.

PH also testified that the tenants had left the rental unit "in an awful way" when they left. However, the landlord has not made an application to recover cleaning expenses or repair costs.

Analysis

I accept the landlord's undisputed testimony that monthly rent was \$1,700 and that the tenant did not pay any rent for July, August, September, or October 2021.

Section 27 of the Act states:

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.

By not paying their rent when it was due, the tenants have breached this section of the Act. They must pay the landlord the rent that is owed for July to October 2021.

Section 51(1) of the Act states:

Tenant's compensation: section 49 notice

51(1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The tenants received such a notice. They have not received the compensation owed to them under section 51(1) of the Act. As such, they are entitled to an amount equal to one month's rent (\$1,700).

The landlord has not made an application to recover the cost of cleaning or repairing the rental unit. As such, I do not have the authority to order that the tenants pay the landlord any amount in compensation for such alleged breaches. The landlord will have to make another application if they want to recover these costs. I make no findings of fact about the condition of the rental unit at the end of the tenancy.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover the filing fee from the tenants.

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 65, 67, and 72 of the Act, I order that the tenants pay the landlord \$4,350, representing the following:

Description	Amount
Rent arrears (July to October 2021)	\$6,800.00
Section 51(1) compensation	-\$1,700.00
Filing fee	\$100.00
Security deposit credit	-\$850.00
Total	\$4,350.00

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 18, 2022

Residential Tenancy Branch