



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an order of possession for unpaid rent, further to having served a 10 Day Notice to End the tenancy for Unpaid Rent dated November 30, 2021; with a monetary order for unpaid rent of \$2,925.00 from the Tenant; and to recover the \$100.00 cost of his Application filing fee.

The Tenant, the Landlord, and an agent for the Landlord, J.T. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Tenant said he had received the Application and the documentary evidence from the Landlord and had reviewed it prior to the hearing. The Tenant confirmed that he had not submitted any documentary evidence to the RTB or to the Landlord.

Preliminary and Procedural Matters

The Parties provided their email addresses in the hearing, and they confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

The Parties agreed that the Tenant vacated the residential property on January 25, 2022; therefore, the Landlord agreed that he no longer seeks an order of possession for the rental unit.

The Landlord said that the amount of rent owing has risen since when the Landlord first applied for dispute resolution. He said that the Tenant continued to fail to pay rent owing until he moved out. He said the amount owing is now up to \$4,525.00.00, as the Tenant had not paid any rent since paying \$275.00 in November 2021. The Landlord said that the Tenant owes \$1,600.00 per month for November through January 2022, less the \$275.00 already paid for November. The Landlord requested that his Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64 (3) (c) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after correcting the original amount the Landlord's claimed, I find the Landlord seeks from the Tenant not \$2,925.00, but \$4,525.00, plus recovery of the \$100.00 Application filing fee.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on April 1, 2021, with a monthly rent of \$1,600.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$800.00, and a \$200.00 pet damage deposit. The Landlord confirmed that he still holds the deposits for this Application.

In the hearing, both Parties agreed that the Tenant owed the Landlord unpaid rent. They agreed that the Tenant has made and failed to make the following payments in the last few months of the tenancy.

Date Rent Due	Amt. Owing	Amt. Received	Amt. Owing
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Nov 1/21	\$1,600.00	\$275.00	\$1,325.00
Dec 1/21	\$1,600.00	\$0.00	\$1,600.00
Jan 1/22	\$1,600.00	\$0.00	\$1,600.00
	TOTAL		\$4,525.00

In the hearing, the Tenant said:

I had reasons - I didn't just stop paying rent. I had to find a different place to move into, because the place was falling apart. I was losing power – it was killing my fridge, there was no stove, no washer to wash my clothes for the last six months, and nobody would do anything about it. I was forced to look for another place, When I ended up moving out, there was pipes frozen in the shower. I had to wash in the kitchen sink. I can't afford to pay for two places at the same time. Security deposits and way higher pet deposits. I was driving half an hour one way to wash my clothes at my mother's.

All the food was rotten in the freezer and the fridge. There was no heat, no electricity. One light worked because half the power was out; it wasn't the breaker, because it would come back on.

The Landlord said:

Yes, he did ask for the laundry at the end of August. That was the first, I heard about it. We changed the whole machine and then after 2 – 3 weeks, he has the same problem. We sent an electrician to look at that. About in end of November, unfortunately [the Tenant] lost his job, that's what he told me that he has to find another job, so that's why he couldn't pay the rent. Then I heard about the electrical problems. Now the unit is already rented.

The Tenant said that he did not seek assistance with his rental issues at the RTB.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

As the Parties agreed that the Tenant owes the Landlord the amount the Landlord claims, I find the Landlord is successful in his Application. Pursuant to sections 26 and 67, I award the Landlord with **\$4,525.00** in unpaid rent from the Tenant. Given the Landlord’s success in this regard, I also award the Landlord with recovery of his **\$100.00** Application filing fee from the Tenant, pursuant to section 72 of the Act.

I find that this claim meets the criteria under section 72 (2) (b) of the Act to be offset against the Tenant’s security deposit of **\$800.00** and his **\$200.00** pet damage deposit in partial satisfaction of the Landlord’s monetary awards. I authorize the Landlord to retain the Tenant’s \$800.00 security deposit and \$200.00 pet damage deposit.

I, therefore grant the Landlord a Monetary Order of **\$3,625.00** from the Tenant for the remaining monetary awards owed to the Landlord, pursuant to section 67 of the Act.

Conclusion

The Landlord is successful in his Application for \$4,525.00 of unpaid rent from the Tenant, as the Tenant agreed that he owes the Landlord this much rent. The Landlord is also awarded recovery of his \$100.00 Application filing fee from the Tenant.

The Landlord is authorized to retain the Tenant’s **\$800.00** security deposit and his **\$200.00** pet damage deposit in partial satisfaction of the Landlord’s monetary awards. I grant the Landlord a monetary order for the remaining amount owing of **\$3,625.00**.

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: April 14, 2022

Residential Tenancy Branch