



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNR, OLC, RP, PSF / MNR-DR, OPR-DR, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s application for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$3,637 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 that the landlord make repairs to the rental unit pursuant to section 32;
- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46;
- 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; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:15 am in order to enable the tenants to call into the hearing scheduled to start at 11:00 am. The landlord’s property manager (“**BB**”) 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 BB and I were the only ones who had called into the hearing.

The BB testified he served that the tenants with the notice of dispute resolution package and supporting documentary evidence via registered mail on February 22, 2022. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. He confirmed that the landlord received the tenants’ application materials as well. I find that the tenants are deemed served with the landlord’s documents on February 27, 2022, five days after BB mailed them, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment of Landlord's Application

At the hearing, BB sought to amend the landlord's application to include a claim for February, March, and April 2022 rent which he testified remains outstanding. Additionally, he asked that the application be amended to reflect partial payment of arrears made the tenants, which the landlord accepted for use and occupancy only (\$800 total).

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 tenants. Therefore, pursuant to Rule 4.2, I order that the landlords' application be amended to include a claim for February, March, and April, 2022 rent less \$800 (\$1,636).

Preliminary Issue – 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. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the tenants bear the onus to prove they are entitled to the relief sought for all portions of their application except their application to cancel the Notice. As they have

failed to attend the hearing, I find that they have failed to discharge this evidentiary burden. Accordingly, I dismiss all parts of their application except for their application to dispute the Notice, without leave to reapply.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$5,248; and
- 3) recover the filing fee?

Are the tenants entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of BB, not all details of his 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 September 1, 2020. Monthly rent is \$812 and is payable on the first of each month. BB testified that the tenants paid the landlord a security deposit of \$400, which the owner of the rental unit continues to hold in trust for the tenants. BB testified that monthly rent was originally \$800 but was increased to \$812 on January 1, 2022.

BB testified that the tenants failed to pay monthly rent in full for September, October, November, or December 2021 and for January, February, March, or April 2022. He testified that during this time the tenants paid \$1,200 total in monthly rent via three payments of \$400 each on September 28, 2021, February 25, 2022, and March 30, 2022. As stated above, BB testified that the landlord accepted these payments as for use and occupancy of the rental unit only.

In support of this testimony, the landlord submitted a copy of its ledger confirming the payments up until January 5, 2022. I note that the ledger included late payment fees of \$25 for each month from September 2021 to January 2022. Such fees were authorized by the tenancy agreement. As of January 5, 2022, the ledger shows the tenants were in arrears of \$3,737.

On January 6, 2021, BB served the tenants with the Notice by placing it in the tenants' mailbox. It specified an effective date of January 18, 2022. The Notice stated that the tenants were arrears of \$3,637 as of January 1, 2022. BB testified that the landlord excluded any late payments fees from the Notice and does not seek to recover those fees in this application.

Analysis

I accept BB's undisputed testimony in its entirety. I find that the tenant was obligated to pay \$800 per month in rent until January 1, 2021, and then \$812 per month thereafter.

The tenants were served with the Notice on January 6, 2022, and it was deemed served three days later (per section 90 of the Act).

I find that as of the date of the hearing the tenants are \$5,248 in arrears, calculated as follows:

Date	Owed	Paid	Balance
1-Sep-21	\$800	\$0	\$800
28-Sep-21	\$0	\$400	\$400
1-Oct-21	\$800	\$0	\$1,200
1-Nov-21	\$800	\$0	\$2,000
1-Dec-21	\$800	\$0	\$2,800
1-Jan-22	\$812	\$0	\$3,612
1-Feb-22	\$812	\$0	\$4,424
25-Feb-22	\$0	\$400	\$4,024
1-Mar-22	\$812	\$0	\$4,836
30-Mar-22	\$0	\$400	\$4,436
1-Apr-22	\$812	\$0	\$5,248
Total	\$6,448	\$1,200	\$5,248

I note that, as of January 1, 2022, the tenants were \$3,612 in arrears (excluding late fees). The Notice specifies that the tenants were \$3,637 in arrears as of January 1, 2022. I do not find that this discrepancy causes the Notice to be invalid, as, in truth the tenants were in even more arrears than what was indicated on the Notice (having accrued a total of \$125 late fees for September, October, November, and December 2021 as well as for January 2022). It appears that the landlord included one of these late fees on the Notice, although the landlord does not now seek to recover this amount in this application.

Section 26(1) 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.

The tenants have breached this section of the Act by failing to pay rent. As such, they were entitled to serve the tenants with the Notice.

The Notice complies with the form and content requirements of section 52 of the Act.

I find that the Notice was issued for a valid reason, and that the tenants continue to be in arrears. As such, I order that the tenants repay the landlord \$5,248 in rental arrears and I issue an order of possession effective two days after the landlord serves it on the tenants.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it 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 67 and 72 of the Act, I order that the tenants pay the landlord \$4,948, representing the following:

Description	Amount
Arrears	\$5,248.00
Filing fee	\$100.00
Security deposit credit	-\$400.00
Total	\$4,948.00

Pursuant to section 55 of the Act, I order that the tenants 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: April 5, 2022

Residential Tenancy Branch