



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFL, OPR, MNRL, OPL, OPN**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- An order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice") pursuant to sections 46 and 55;
- An order of possession under a Two Month Notice to End Tenancy for Landlord's Use ("Two Month Notice") pursuant to sections 49 and 55;
- An order of possession under a Notice to End Tenancy given by the tenant pursuant to section 55(2)(a);
- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

The landlord attended and had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained.

I informed the landlord that recording of the hearing is prohibited under the Rules of Procedure. The landlord confirmed they were not recording the hearing.

The landlord confirmed the email address to which the Decision shall be sent.

The tenants did not attend and are referenced herein in the singular.

The landlord testified the tenant vacated the unit February 28, 2022 without notice and without providing a forwarding address. The landlord withdrew the requests for an Order of Possession.

Service Upon Tenant

The landlord testified the landlord served the tenant with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on February 11, 2022, and deemed received by the tenant five days later under section 90 of the *Act*, on February 16, 2022. The landlord explained that the tenant was still residing in the rental unit when the Application for Dispute Resolution was filed. Documents were sent to the address of the unit.

The landlord provided the Canada Post tracking number in support of service and submitted a copy of the invoice.

Section 89 of the *Act* provides that the Notice of Hearing and Application for Dispute Resolution may be sent to the tenant as follows:

(c) by sending a copy by registered mail to the address at which the person resides [...].

Pursuant to sections 89 and 90 and based upon the affirmed testimony of the landlord, I find that on February 16, 2022, the landlord served the tenant by registered mail sent to the address at which the tenant resided.

Preliminary Issue – Amendment to Landlord’s Claim – Security and Pet Deposits

Pursuant to section 72, the landlord requested an amendment to the landlord’s application to request that the landlord be authorized to apply to any monetary award granted the security deposit of \$800.00 and the pet deposit of \$800.00 in the total amount of \$1,600.00 (“the deposit”) which is held by the landlord.

The landlord testified the tenant paid the landlord the deposit at the start of the tenancy. The tenant gave the landlord verbal permission to apply the deposit to the outstanding rent. The tenant has not given the landlord written permission to do so.

Section 4.2 of the Rules of Procedure provides that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include a request authorizing the landlord to apply the security deposit to a monetary award for outstanding rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to allow the landlord to request that the deposit of \$1,600.00 be applied to any monetary award.

Preliminary Issue – Amendment to Landlord's Claim – Amount of Rent Outstanding

The landlord requested an amendment to the landlord's application regarding the Monetary Order requested.

The landlord's application for outstanding rent for December 2021, January 2022 and February 2022 did not include compensation due the tenant under section 51 which requires the landlord to provide an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Section 4.2 of the Rules of Procedure provide that a landlord's monetary claim may be amended at the hearing in circumstances that can reasonably be anticipated.

I find the tenant could reasonably anticipate the landlord's claim would be amended to include compensation for one month's rent. The amendment would not be prejudicial to the respondent.

Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the landlord's applications to decrease the landlord's overall claim by \$1,600.00 for application of the deposit to the claim and \$1,600.00 for one month's rent as section 51 compensation.

The landlord's claim for compensation for outstanding rent is as follows, including a request for reimbursement of the filing fee:

ITEM	AMOUNT
Rent December 2021	\$1,600.00
Rent January 2022	\$1,600.00
Rent February 2022	\$1,600.00
(Less compensation one month's rent)	(\$1,600.00)
(Less deposit)	(\$1,600.00)
Filing fee	\$100.00
TOTAL Monetary Order Requested	\$1,700.00

Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*;
- Authorization to recover the filing fee for this application pursuant to section 72.

Background

As the tenant did not attend the hearing, the landlord provided uncontradicted affirmed testimony as follows.

While I have turned my mind to all the documentary evidence and the testimony, not all details of the landlord's submissions and arguments are reproduced here. Only relevant, admissible evidence is considered. The principal aspects of the claim and my findings around each are set out below.

The landlord submitted a comprehensive evidence package supporting the landlord's claims in all aspects.

The landlord submitted a copy of the tenancy agreement and provided the following

details about the background of the tenancy:

ITEM	DETAILS
Type of tenancy	Monthly
Date of beginning	May 1, 2020
Date tenant vacated	February 28, 2022
Monthly rent payable on 1 st	\$1,600.00
Security deposit	\$800.00
Pet deposit	\$800.00
Date of landlord's application	February 2, 2022
Forwarding Address	Not provided

The landlord testified a condition inspection was conducted on moving in. As the landlord had no notice the tenant vacated and was not provided a forwarding address, no condition inspection report on moving out was scheduled or took place.

The landlord described each claim as follows.

Two Month Notice

The landlord submitted a copy of the Two Month Notice which is in the standard RTB form. The Notice is dated December 11, 2021, and is effective February 28, 2022. The landlord served the tenant personally on December 11, 2021. The tenant did not dispute the Notice.

The landlord issued a 10 Day Notice for nonpayment of rent on January 17, 2022. A copy of the Notice was submitted which is in the standard RTB form. The landlord served the notice by placing it in the tenant's mailbox that day, thereby effecting service on January 20, 2022, pursuant to section 90. The tenant did not dispute the Notice and did not move out as required.

Rent

The landlord testified that the tenant owed rent for three months, December 2021 to February 2022. They were entitled to one month's compensation pursuant to the landlord's Two Month Notice. The landlord requested authorisation to apply the deposit of \$1,600.00 to the award. The landlord claimed reimbursement of the filing fee.

The landlord submitted a copy of a ledger showing all payments made and amounts owing.

The landlord's claim is summarized as follows:

ITEM	AMOUNT
Rent December 2021	\$1,600.00
Rent January 2022	\$1,600.00
Rent February 2022	\$1,600.00
(Less compensation one month's rent)	(\$1,600.00)
(Less deposit)	(\$1,600.00)
Filing fee	\$100.00
TOTAL Monetary Order Requested	\$1,700.00

Total Monetary Award Requested

The landlord's claim for compensation is summarized above.

The landlord requested a monetary order of **\$1,700.00**.

Analysis

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria before compensation may be awarded:

1. Has the respondent party (the tenant) to the tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?

2. If yes, did the loss or damage result from the non-compliance?
3. Has the applicant (landlord) proven the amount or value of their damage or loss?
4. Has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

. . .

67 Without limiting the general authority in section 62 (3) [. . .] if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Each of the above four tests are considered in my findings.

I give substantial weight to the landlord's evidence as summarized above. Based on the uncontradicted credible evidence of the landlord, I find the landlord has met the burden of proof on a balance of probabilities with respect to all aspects of the claims.

Rent

I find the landlord has met the burden of proof on a balance of probabilities that the tenant vacated leaving rent owing as claimed.

I accept the landlord's evidence regarding the amount of the deposit held by him and the issuance of the Two Month Notice with the requirement to compensate the tenant in the amount of one month's rent.

Filing Fee and Security Deposit

As the landlord has been successful in this matter, I award reimbursement of the filing

fee of \$100.00.

I authorize the landlord to apply the deposit to the award.

Summary of Award

I grant a monetary award to the landlord summarized as follows:

ITEM	AMOUNT
Rent December 2021	\$1,600.00
Rent January 2022	\$1,600.00
Rent February 2022	\$1,600.00
(Less compensation one month's rent)	(\$1,600.00)
(Less deposit)	(\$1,600.00)
Filing fee	\$100.00
TOTAL Monetary Order	\$1,700.00

In summary, I grant the landlord a Monetary Order of **\$1,700.00**.

Conclusion

The landlord is entitled to a Monetary Order in the amount of **\$1,700.00**.

This Order must be served on the tenant. If the tenant fails to comply with this Order the landlord may file the order in the Provincial Court (Small Claims) to be 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: April 07, 2022

Residential Tenancy Branch