



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes OPR-DR, MNR-DR, FFL; CNR, CNC

Introduction

This hearing dealt with the landlord's application against the tenant and tenant KC, pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 55;
- a monetary order for unpaid rent, pursuant to section 67; and
- authorization to recover the filing fee for his application, pursuant to section 72.

This hearing also dealt with the tenants' application (tenant and tenant KF) against the landlord, pursuant to the *Act* for:

- cancellation of the landlord's Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, dated January 27, 2022 ("10 Day Notice"), pursuant to section 46; and
- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated January 27, 2022 ("1 Month Notice"), pursuant to section 47.

The "first hearing" on May 6, 2022, lasted approximately 17 minutes. The first hearing began at 9:30 a.m. with me and the landlord's agent present. The tenant called in late at 9:35 a.m. That hearing ended at 9:47 a.m.

The "second hearing" on June 16, 2022, lasted approximately 17 minutes, from 11:00 a.m. to 11:17 a.m.

"Tenant KF" and "tenant KC" did not attend both hearings. Tenant DF ("tenant") attended the first hearing only, not the second hearing. The landlord's agent attended both hearings. At both hearings, all participants were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the first hearing, the tenant confirmed her name and spelling and provided her email address for me to send my interim decision to her. At the first hearing, she confirmed that she had permission to represent tenant KF, who is her daughter, but stated that she did not have permission to represent tenant KC.

At both hearings, the landlord's agent confirmed his name and spelling and provided his email address for me to send both decisions to the landlord. At both hearings, he confirmed that he had permission to represent the landlord named in both applications. At both hearings, he confirmed that the landlord owns the rental unit and provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* ("*Rules*") does not permit recording of this hearing by any party. At the first hearing, the landlord's agent and the tenant both separately affirmed, under oath, that they would not record the first hearing. At the second hearing, the landlord's agent affirmed, under oath, that he would not record the second hearing.

At the first hearing, I explained the hearing process to the landlord's agent and the tenant, they had an opportunity to ask questions, and neither party made any accommodation requests.

At the second hearing, I explained the hearing process to the landlord's agent, he had an opportunity to ask questions, and he did not make any adjournment or accommodation requests.

Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on May 6, 2022, was adjourned because the tenant claimed that she was medically unwell. By way of my interim decision, dated May 6, 2022, I adjourned the landlord's application to the second hearing date of June 16, 2022. During the second hearing, the landlord's agent affirmed that the above information was correct.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information, from the RTB. At the second hearing, the landlord's agent confirmed receipt of my interim decision and the notice of reconvened hearing from the RTB.

My interim decision and the notice of reconvened hearing were sent to the tenant directly by the RTB on May 9, 2022, as per the information contained in the online RTB database. In accordance with section 89 of the *Act* and sections 43 and 44 of the *Residential Tenancy Regulation* ("*Regulation*"), I find that the tenant was deemed served with the interim decision and the notice of reconvened hearing on May 12, 2022, three days after it was sent to the tenant's email address. The tenant provided her email address for service of the above documents at the first hearing, as noted above in this decision.

At the second hearing, I reviewed the following information at pages 3, 4, and 5 of my interim decision, with the landlord's agent:

The tenant requested an adjournment of this hearing. She said that she was in the hospital and released at noon on the day before this hearing. She confirmed that she did not provide any documentary evidence for this hearing, regarding her recent hospital visit. She agreed that she did not notify the landlord or the RTB about her adjournment request prior to this hearing. She explained that she provided many medical records but stated that she was unable to provide me with the file names or page numbers during this hearing. She confirmed that neither tenant KF, nor any other agents, were available to speak on her behalf or assist her at this hearing.

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The landlord's agent asked the tenant how long of an adjournment she required. The tenant asked for an adjournment of one month.

The landlord's agent consented to an adjournment of this hearing, stating that he would prefer that the matter be heard in a month, as per the tenant's request. The tenant stated that only she, not tenant KF, would be appearing at any future reconvened hearing.

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I find that an adjournment of this matter would provide a fair opportunity for the tenant to attend this hearing and provide submissions in response to the landlord's application. I accept the testimony of the tenant, that she was in the hospital on the day before this hearing and she was medically unwell to provide submissions regarding the landlord's application at this hearing. I accept the tenant's testimony that she did not have any other agents to assist her at this hearing, including the other two tenants named in these applications, tenant KF and tenant KC. The landlord's agent consented to the adjournment request by the tenant. I find that the prejudice to the landlord is minimal, given that this is a

non-urgent monetary application, not an urgent order of possession claim, since the tenants have moved out.

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I informed both parties that since they informed me during this hearing, that they did not want to call any witnesses at this hearing, neither party would not be permitted to call any witnesses at the reconvened hearing. Both parties confirmed their understanding of same.

I informed both parties that they are directed not to serve any further evidence regarding the landlord's application, prior to the reconvened hearing. I notified them that no witnesses are permitted to testify at the reconvened hearing. I informed them that neither party is permitted to file any new applications after this hearing date of May 6, 2022, to be joined and heard together with the landlord's application, at the reconvened hearing. Both parties confirmed their understanding of same.

During the second hearing, the landlord's agent affirmed that the above information was correct, as per my interim decision.

Preliminary Issue – Service of Documents and Dismissal of Applications

At the outset of the first hearing, the landlord's agent and the tenant agreed that the tenants vacated the rental unit on March 2, 2022. At both hearings, the landlord's agent stated that the landlord did not require an order of possession against the tenants. At both hearings, I informed him that this portion of the landlord's application was dismissed without leave to reapply and he confirmed his understanding of same.

At the first hearing, the tenant stated that the tenants did not require any of the relief in their application, to cancel the 10 Day Notice and to cancel the 1 Month Notice. At the first hearing, I informed her that the tenants' entire application was dismissed without leave to reapply and she confirmed her understanding of same. At the second hearing, the landlord's agent affirmed his understanding of the above information.

At the first hearing, I informed both parties that the only matters left to determine were the landlord's application for a monetary order for unpaid rent and the filing fee, and both parties affirmed their understanding of same. At the second hearing, the landlord's agent affirmed his understanding of the above information.

At the first hearing, the tenant confirmed receipt of the landlord's application for dispute resolution hearing package. As per my interim decision, in accordance with sections 89 and 90 of the *Act*, I found that the tenant was duly served with the landlord's application.

At the first hearing, the landlord's agent did not provide testimony regarding service of the landlord's application to tenant KC. At the first hearing, the landlord's agent stated that tenant KC was a resident at the rental unit, but he did not have contact information for him, aside from the rental unit address. At the first hearing, the tenant said that tenant KC was not a tenant at the rental unit, she was still in contact with tenant KC, and she would provide him with a copy of my interim decision and the notice of reconvened hearing, and the landlord's agent agreed to same.

Despite the fact that the above information was contained in my interim decision, the landlord's agent did not provide testimony regarding service of the landlord's application to tenant KC at the second hearing.

I find that the landlord failed to provide testimony or sufficient evidence regarding service of the landlord's application to tenant KC. Accordingly, I find that tenant KC was not served with the landlord's application, as required by sections 89 and 90 of the *Act*. The landlord's application for a monetary order for unpaid rent against tenant KC, is dismissed with leave to reapply. The landlord's application for the \$100.00 filing fee against tenant KC, is dismissed without leave to reapply.

This final decision and monetary order are made against the tenant only, since the landlord filed his application against the tenant and tenant KC only. The landlord did not file his application against tenant KF, who the landlord's agent confirmed, during the second hearing, is a minor.

Preliminary Issue – Amendment of Landlord's Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlord's application to increase the landlord's monetary claim to include March 2022 rent of \$2,750.00. The landlord's agent requested this amendment at the second hearing. He said that he provided written evidence regarding this claim, prior to the first hearing.

The landlord filed his application on February 3, 2022, prior to the March 2022 rent being due. I find that the tenant is aware that rent is due as per her tenancy agreement. The tenant continued to reside in the rental unit until March 2, 2022, despite the fact that a 10 Day Notice required her to vacate earlier, for failure to pay the full rent due.

Therefore, the tenant knew or should have known that by failing to pay her full rent, the landlord would pursue all unpaid rent at the second hearing. For the above reasons, I find that the tenant had appropriate notice of the landlord's claim for increased rent, despite the fact that she did not attend the second hearing.

I also find that the tenant had notice of the landlord's claim for March 2022 rent, as it was contained in the landlord's written evidence submitted prior to the first hearing. At the first hearing, the tenant affirmed that she received the landlord's application and evidence.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for his application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agent at the second hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

At the second hearing, the landlord's agent testified regarding the following facts. This tenancy began on May 1, 2021 and ended on March 2, 2022. Monthly rent in the amount of \$2,750.00 was payable on the first day of each month. A security deposit of \$1,450.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties.

At the second hearing, the landlord's agent stated the following facts. The landlord seeks a monetary order of \$6,000.00 for unpaid rent from January to March 2022, and recovery of the \$100.00 application filing fee. The tenant failed to pay rent of \$500.00 for January 2022, \$2,750.00 for February 2022, and \$2,750.00 for March 2022, totalling \$6,000.00. The landlord was unable to re-rent the rental unit to new tenants until April 1, 2022, since the tenant caused damages in the rental unit, he did not know when the tenant was leaving the rental unit, and the tenant did not abide by the 10 Day Notice to vacate earlier before March 2022.

Analysis

As per section 26 of the *Act*, the tenant is required to pay rent on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

The landlord's agent provided undisputed affirmed testimony and evidence at the second hearing, that the tenant failed to pay rent of \$500.00 for January 2022, \$2,750.00 for February 2022, and \$2,750 for March 2022, totalling \$6,000.00. Therefore, I find that the landlord is entitled to \$6,000.00 total in rental arrears from the tenant.

At the first hearing, the landlord's agent and the tenant agreed that this tenancy ended on March 2, 2022. I find that the rent was due on March 1, 2022, as per the parties' tenancy agreement, so the tenant owes rent for the full month of March 2022 to the landlord. I also accept the undisputed affirmed testimony of the landlord's agent at the second hearing, that the landlord was unable to re-rent the rental unit to new tenants until April 1, 2022, since the tenant caused damages in the rental unit, he did not know when the tenant was leaving the rental unit, and the tenant did not abide by the 10 Day Notice to vacate earlier, prior to March 1, 2022.

As the landlord was partially successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

The landlord continues to hold the tenant's security deposit of \$1,450.00. The landlord did not apply to retain the tenant's security deposit. However, in accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's entire security deposit of \$1,450.00, in partial satisfaction of the monetary award. No interest is payable over the period of this tenancy.

Conclusion

The tenants' entire application is dismissed without leave to reapply.

The landlord's application for an order of possession is dismissed without leave to reapply.

I order the landlord to retain the tenant's entire security deposit of \$1,450.00 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$4,650.00 against the tenant. The tenant must be served with this Order as soon as possible. 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: June 16, 2022

Residential Tenancy Branch