



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, FFL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

On March 25, 2022, an Adjudicator appointed pursuant to the Residential Tenancy Act (the Act) adjourned the landlord's application for dispute resolution to a participatory hearing. She did so on the basis of an ex parte hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

I have reviewed all documentary evidence and I find that the landlord's name on the tenancy agreement (Person S.C.) does not match either of the landlords named on the Application for Dispute Resolution (Person M.C. and Person Y.C.). There is also no evidence or documentation showing that the applicants are the owners of the rental property or are otherwise entitled to any orders that may result from this application.

I also note that the tenancy agreement indicates the monthly rent is \$1,800.00. The agreement also indicates the rent was adjusted to \$2,300 as of February 5, 2020. However, the amount of the monthly rent listed on the Direct request Worksheet is \$1,850.00, which does not match either amount listed on the tenancy agreement.

I have been delegated authority under the Act to consider the landlord's application for:

- An order of possession for unpaid rent, by direct request, pursuant to sections 46 and 55; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The landlord attended the hearing, accompanied by her husband, the co-owner of the rental unit, YC. Both tenants also attended the hearing. As all parties were present, service of documents was confirmed. The tenants acknowledged service of the

landlord's Notice of Dispute Resolution Proceedings for today's hearing and the landlords acknowledged service of the tenant's evidence package.

The landlord also provided additional evidence for this hearing on July 8, 2022 which the tenants do not acknowledge receipt of. This evidence consists of screenshots of e-transfers made by the tenant and a text message sent by the tenant to the landlord. The admission of the late evidence was not canvassed during the hearing, however the dates and amounts of the rent payments were read out to the tenants and they acknowledged making those payments. The other piece of late evidence, the text message sent by the tenant, was excluded from consideration in this proceeding for not being exchanged with the tenant at least 14 days prior to the hearing, pursuant to Rule 3.14 of the Residential Tenancy Branch Rules of Procedure.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Settlement Reached

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved the following resolution of a portion of the dispute.

1. The parties mutually agree to end the tenancy. The tenancy will end at 1:00 p.m. on July 31, 2022, by which time the tenants and any other occupants will have vacated the rental unit.
2. The rights and obligations of the parties continue until the tenancy ends.
3. The 10 Day Notice to End Tenancy for Unpaid Rent/Utilities is cancelled and of no further force or effect.
4. To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession upon the tenant immediately and enforce it as early as 1:00 p.m. on July 31, 2022, should the landlord be required to do so.

5. Any of the tenants' possessions left on the rental property may be considered abandoned by the tenants and the landlord may dispose of them at her will.

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle all aspects of this dispute. As the parties resolved matters by agreement, I make no findings of fact or law with respect to this portion of the application before me.

Issue(s) to be Decided

Is the landlord entitled to an order requiring the payment of rent in accordance with section 55(4), after being served with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities and not filing an application to dispute it?

Background and Evidence

The landlord provided the following evidence:

- A copy of a residential tenancy agreement which names a landlord who is not one of the applicants and was signed by the tenants on December 17, 2018, indicating a monthly rent of \$1,800.00, due on the first day of each month for a tenancy commencing on January 1, 2018
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated February 9, 2022, for \$6,750.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of February 19, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 6:30 pm on February 9, 2022
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy

The landlord MC ("landlord") gave the following testimony. She is the named landlord on the tenancy agreement but goes by a different name (SC) in her professional career. Her husband, the person who signed the notice to end tenancy is the co-owner of the rental unit.

The rental unit is an older home, 2 storeys, 4 bedroom, 2 bathrooms. The tenancy began on January 1, 2018 with rent originally set at \$1,800.00 per month, payable on the 15th day of each month. Rent was raised with written consent to \$2,300.00 per

month on February 5, 2020, to take effect on February 15th, however the tenants never paid that.

The landlord testified that there was a text message exchanged between the parties whereby the landlord agreed that rent would “revert” to \$1,850.00 per month because the landlord was aware the tenants could not afford \$2,300.00 per month. No copy of the text was provided as evidence by the landlord.

The landlord testified that when they served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on February 2nd, arrears of rent equalled \$6,750.00 between November 15, 2022 and February 15, 2022. The landlord provided a direct request worksheet indicting a \$650.00 payment in November, none in December, January, or February. In her evidence, however, the landlord provided e-transfer statements indicating the following payments:

Date	Amount
November 5, 2021	\$500.00
December 14, 2021	\$1,000.00
December 15, 2021	\$1,000.00
December 31, 2021	\$800.00
January 15, 2022	\$300.00
January 31, 2022	\$300.00
Total	\$3,900.00

The landlord testified that beyond January 31st, no further payments have been made. All payments of rent were made by interac e-transfer and that no cash transactions were made. The landlord provided the yearly amounts of rent paid by the tenants, however those amounts were not recorded as the landlord is only seeking a monetary order from November 2021 onward in the original amount of \$1,800.00 per month.

The tenants gave the following testimony. The amounts shown on the landlord’s direct request worksheet are incorrect. The amounts the landlord seeks are based on \$2,300.00 per month, not the agreed upon \$1,800.00 per month. It was “stupid” on their part to not have disputed the rent increase back in February, 2020. It was “illegal” because the landlords did not provide a new tenancy agreement for them to sign. When the landlord served the notice to end tenancy, they felt “blindsided” because while they knew they were behind in rent, it only amounted to \$153.00 according to their calculations. The tenants acknowledge they should have disputed it but didn’t due to not being familiar with the process.

They frequently paid rent to the landlord by cash and the landlord wouldn't ever provide them with a receipt. The tenants provided an accounting of the payments made in their 6-page written submission, however no proof of payments were supplied to corroborate them.

Analysis

Addressing the adjudicator's concerns, I find that the landlord named on the tenancy agreement, (SC) and the landlord who attended the hearing as landlord (MC) are one in the same.

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 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.

Section 7 of the Act states: 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.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

First, I address the tenant's argument that the landlord seeks repayment of rent at \$2,300.00 per month. I find this is not the case. On the direct request worksheet, rent appears to be set at \$1,850.00 per month from November 2022 to February 2022. Less the acknowledged \$650.00 payment sometime in November, the amount would be \$6,750.00 as shown in the calculations.

Second, while the tenants allege that the landlord failed to provide them with receipts for payments of rent made in cash, I find insufficient evidence to make this finding. Many of the payments of rent made to the landlord are by e-transfer and the landlord has acknowledged each one of them by providing statements. I find this provides verifiable reassurance to both parties of when the payments were made and in what amount.

Consequently, without any evidence to substantiate it, I am unable to find any payments of rent were made by cash.

According to the tenancy agreement, rent was due on the 15th day of each month. Accordingly, the landlord seeks repayment of rent from November 15, 2021 to July 15, 2022, and pro-rated rent for the additional 15 days from July 16 until the end of the tenancy on July 31, 2022.

Based on the evidence before me, I find the tenants were obligated to pay rent in the amount of \$1,800.00 per month for the timeframe noted above. I find that the tenants made payments of rent by e-transfer in the amount of \$3,900.00 and I find it reasonable that this amount should be deducted from the arrears in rent owed.

Item	Amount
Rent from November 15, 2021 to July 15, 2022 (\$1,800.00 x 9)	\$16,200.00
Pro-rated rent from July 16 to July 31: \$1,800.00 / 31 (days) x 16 (days)	\$929.03
Less interac e-transfer payments made	(\$3,900.00)
Total	\$13,229.03

There is the anomaly in the landlord's direct request worksheet indicating a payment of \$650.00 made in November that was not accounted for in the e-transfer statements provided as evidence by the landlord. During testimony, when I asked the landlord why the three interac payments made in December and the two interac payments made in January weren't accounted for in the direct request worksheet, the landlord provided a vague response saying those payments were applied to "past rent". I do not have sufficient evidence to substantiate a claim for past rent prior to November 15th. Consequently, I do not apply the interac payments to any rental arrears prior to that date.

On a balance of probabilities, I find the landlord missed providing proof of the \$650.00 payment made by the tenants in November but accounted for it in the direct request worksheet. As a result, I find the \$650.00 payment, acknowledged by the landlord, ought to be subtracted from the amount owing from between November and present, and I reduce the monetary award to **\$12,879.03**.

The landlord was successful in her claim and the filing fee is awarded in the amount of \$100.00. The total amount of the monetary award is **\$12,979.03**.

Conclusion

In accordance with section 63 of the Act, I recorded the following settlement terms:

1. The parties mutually agree to end the tenancy. The tenancy will end at 1:00 p.m. on July 31, 2022, by which time the tenants and any other occupants will have vacated the rental unit.
2. The rights and obligations of the parties continue until the tenancy ends.
3. The 10 Day Notice to End Tenancy for Unpaid Rent/Utilities is cancelled and of no further force or effect.
4. To give effect to the settlement reached between the parties and as discussed at the hearing, I issue an Order of Possession to the landlord. The landlord is to serve this Order of Possession upon the tenant immediately and enforce it as early as 1:00 p.m. on July 31, 2022, should the landlord be required to do so.
5. Any of the tenants' possessions left on the rental property after 1:00 p.m. on July 31, 2022 may be considered abandoned by the tenants and the landlord may dispose of them.

Pursuant to sections 55(4)(b) and section 67, I grant the landlord a monetary award in the amount of **\$12,979.03**.

This decision is legal, final, binding and enforceable and 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: July 12, 2022

Residential Tenancy Branch