



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPR-DR, MNR-DR

Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order of possession pursuant to s. 55;
- A monetary order pursuant to s. 67 for unpaid rent; and
- Return of his filing fee pursuant to s. 72.

B.M. appeared as the Landlord. The Tenant did not attend the hearing, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that he was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised that the Notice of Dispute Resolution was served on the Tenant via registered mail sent on April 15, 2022. Based on the undisputed testimony of the Landlord, I find that his application was served in accordance with s. 89 of the *Act*. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Notice of Dispute Resolution on April 20, 2022.

Preliminary Issue – Service of the Landlord’s Evidence

The Landlord advised that the Tenant vacated the rental unit on May 7, 2022. The Landlord further advised that he served the Tenant with his evidence by way of registered mail sent to the rental unit address on July 7, 2022.

Section 89(1) of the *Act* permits service of application materials via registered mail to an address in which the person resides. In this instance, the Landlord admits that the evidence was sent to an address in which the Tenant has not resided since May 7, 2022.

The Landlord argued that the rental unit in question does not have mail sent to the actual property but that it is sent to a neighbourhood mailbox. The Landlord says that Canada Post has advised him that the Tenant still has access to the mailbox for the former rental unit.

I was provided with tracking information for the July 7, 2022 registered mail package. Upon review of the information, it indicates that it has not been retrieved.

Presently, I am unable to find that the Landlord served his evidence on the Tenant. It was, admittedly, sent to an address in which the Tenant no longer resides. Though I accept the Tenant may still have access to the mailbox, the fact remains that the tracking information indicates the evidence was not retrieved.

As I cannot find that the evidence was served, it is not admitted. The decision will be based strictly on the oral submissions made by the Landlord.

Preliminary Issue – Landlord's Claim

At the hearing, the Landlord made submissions with respect to damages he says were caused by the Tenant. As mentioned above, the Landlord's application is for an order for unpaid rent. The Landlord admits that he did not file an amendment and argued that completing the monetary order worksheet was sufficient.

Rule 2.2 of the Rules of Procedure limits a claim to what is stated in the application. The intention of Rule 2.2 is to ensure that respondents have notice of the claims that are being levied against them. Applications can be amended prior to the hearing by filing the paperwork in compliance Rule 4.1 or at the hearing upon application of Rule 4.2. Amendments at the hearing are only permitted in "circumstances that can be reasonably anticipated, such as when the amount of rent owed has increased since the time the Application for Dispute Resolution was made".

In this instance, the Landlord failed to amend his claims for damages to the rental unit. Completing a monetary order worksheet is not the same as amending the application as contemplated by Rule 4.1. These aspects of the Landlord's submissions were not properly before me and, as such, I do not consider them. Should the Landlord wish to claim damages to the rental unit, he is at liberty to file an application seeking those amounts.

I accept that the Landlord is seeking revised amount for unpaid rent due to the passage of time. I find that the increased amount of rent owed could be reasonably anticipated as contemplated by Rule 4.2 of the Rules of Procedure. I permit the Landlord to seek the revised amount for unpaid rent.

As the Tenant has vacated the rental unit, the order of possession is moot. The matter will be decided strictly on the issue of unpaid rent.

Issues to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent?
- 2) Is the Landlord entitled to the return of his filing fee?

Background and Evidence

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on December 1, 2019.
- Rent of \$1,200.00 was due on the first day of each month.
- The Landlord holds a security deposit of \$600.00 in trust for the Tenant.

The Landlord says that the Tenant paid rent in the following amounts:

Month	Rent Due	Rent Paid	Difference
January 2022	\$1,200.00	\$790.00	-\$410.00
February 2022	\$1,200.00	\$0.00	-\$1,200.00
March 2022	\$1,200.00	\$600.00	-\$600.00
April 2022	\$1,200.00	\$0.00	-\$1,200.00
May 2022	\$1,200.00	\$0.00	-\$1,200.00
Total Arrears			\$4,610.00

As mentioned above, the Tenant vacated the rental unit on May 7, 2022.

Analysis

The Landlord seeks an order for unpaid rent.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent. In the present circumstances, I accept the undisputed evidence of the Landlord that rent was not paid in accordance with the tenancy agreement and the Tenant had no lawful reason for withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the tenancy agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

Based again on the undisputed evidence of the Landlord, I find that the Tenant has failed to pay rent in the amount of \$4,610.00, which accrued from January 2022 to May 2022. The Landlord could not have mitigated his damages under the circumstances as the Tenant continued to reside within the rental unit.

I find that the Landlord has established a monetary claim for unpaid rent in the amount of \$4,610.00. I exercise my discretion under s. 72(2) of the *Act* and direct that the Landlord retain the security deposit of \$600.00 in partial satisfaction of the amount of unpaid rent owed.

Conclusion

The Tenant vacated the rental unit on May 7, 2022. The Landlord's request for an order of possession is moot. This portion of the claim is dismissed.

The Landlord has established a monetary claim for unpaid rent totalling \$4,610.00.

The Landlord was largely successful in his application, I find that he is entitled to the return of his filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlord's \$100.00 filing fee.

I make a total monetary order taking the following into account:

Item	Amount
Total Unpaid Rent	\$4,610.00
Filing fee to be paid by Tenant as per s. 72(1)	\$100.00
Less security deposit to be retained by the Landlord as per s. 72(2)	-\$600.00
TOTAL	\$4,110.00

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$4,110.00** to the Landlord.

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with 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: July 24, 2022

Residential Tenancy Branch