



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

TT: CNR

LL: MNR-DR, OPR-DR, FFL

Introduction

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord’s application, reconvened from an ex parte Direct Request proceeding, was for:

- an Order of Possession pursuant to section 55;
- a monetary order for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants named the personal respondent and applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”) pursuant to section 46.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. Both the corporate landlord and personal respondent were represented by an agent (the “landlord”). The tenant CS (the “tenant”) confirmed they represented both named tenants.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the parties confirmed that this tenancy has already ended with the tenants vacating the rental unit. The landlord withdrew the portion of their application seeking an Order of Possession. The tenant withdrew their application in its entirety.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and recovery of filing fees as sought?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. The monthly rent for this tenancy was \$2,600.00 payable on the last day of the previous month. A security deposit of \$1,300.00 was collected and is still held by the landlord. The tenants failed to pay rent for the months of April, May and June, 2022 and there is an arrear of \$7,800.00 for this tenancy.

The tenant complained about the condition of the rental unit and suggested that they should not be required to pay the full rent required under the tenancy agreement.

Analysis

Pursuant to section 26(1) of the *Act*, a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent. While the tenants made some vague submissions about their displeasure with the condition of the rental unit, I find this would not allow the tenants to make a unilateral deduction from the rent. The *Act* does not provide that the tenant may simply make deductions from the monthly rent even if they feel the landlord is being negligent in maintaining the rental unit. In any event, I find the tenant's submissions are not

supported in any documentary evidence, not mentioned in their application or written submissions, and have little air of reality or persuasive value.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant was required to pay the monthly rent of \$2,600.00 for each of the months of April, May and June, 2022. I accept the undisputed evidence of the parties that the tenants failed to pay any rent for those months in breach of the agreement and there is an arrear of \$7,800.00 for this tenancy. Accordingly, I grant a monetary award to the landlords for unpaid rent owing of \$7,800.00 pursuant to section 67 of the *Act*.

As the landlord was successful in their application, they are also entitled to recover their filing fee from the tenants.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in the landlord's favour

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$6,600.00, representing the unpaid rent and recovery of filing fee and authorizing the landlords to retain the security deposit. The tenants must be served with this Order as soon as possible. Should the tenants 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.

The tenants' application and the balance of the landlord's application seeking an Order of Possession are withdrawn and dismissed without leave to reapply.

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: August 26, 2022

Residential Tenancy Branch