



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, OPU, OPC, MNRL-S, MNDL-S, MNDCL-S, OPL (Landlords)
PSF, CNL-MT (Tenant)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Landlords applied February 14, 2022, for the following:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Utilities (and Rent) (the “10 Day Notice”)
- For an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “One Month Notice”)
- To recover unpaid rent
- To keep the security and pet damage deposits
- For compensation for damage to the rental unit
- For compensation for monetary loss or other money owed
- For an Order of Possession based on a Two Month Notice to End Tenancy for Landlord's Use of Property
- To recover the filing fee

The Tenant applied July 18, 2022, for the following:

- For an order that the Landlords provide services or facilities required by the tenancy agreement or law
- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property and for more time to dispute the notice

This was a reconvened hearing. The parties first appeared before another Arbitrator, M.L., on July 18, 2022, and an Interim Decision was issued the same date. The parties

then appeared before me August 15, 2022, and an Interim Decision was issued the same date. This Decision should be read with the Interim Decisions.

This reconvened hearing occurred August 22, 2022. The Landlords and Tenant appeared at the hearing. The Tenant was going to call witnesses at the hearing; however, it was determined that they are not relevant to the issues before me.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The parties provided affirmed testimony.

Preliminary Matter - Service

At the August 15th hearing, the Landlords confirmed receipt of the Tenant's Application. The Landlords confirmed receipt of the Tenant's evidence; however, raised an issue about the quality of the copies provided. The Tenant said they are not relying on their documentary evidence and therefore I did not go into this issue further.

At the August 15th hearing, the Tenant testified that they did not receive the Landlords' Application. However, the Tenant acknowledged receiving a "summary email" from the RTB about the Landlords' Application, knowing about the hearing, knowing about the issues before me and knowing what would be addressed at the hearing and therefore, I did not go into this issue further.

The Tenant testified that they did not receive the Landlords' evidence for the hearing. The Landlords testified that they sent their evidence to the Tenant by registered mail and provided Tracking Number 860. The Landlords also provided documentary evidence of service. I looked Tracking Number 860 up on the Canada Post website which shows the package was sent July 27, 2022, went out for delivery July 29, 2022, and was refused by the recipient July 29, 2022.

The Tenant testified that they had a mailbox key at the start of the tenancy but at some point, it stopped working and they let the Landlords know this July 18, 2022. The Tenant testified that they received a new mailbox key July 25, 2022. The Tenant relied on this issue as the reason they did not receive the Landlords' evidence.

I find based on the documentary evidence of service and Canada Post website that the Landlords' evidence was sent to the Tenant July 27, 2022, in accordance with section

88(c) of the *Residential Tenancy Act* (the “*Act*”). I find based on the Canada Post website that the Tenant refused the package July 29, 2022. The Tenant cannot avoid service by refusing a registered mail package. Pursuant to section 90(a) of the *Act*, the Tenant would usually be deemed to have received the package five days after mailing; however, I find the Tenant received the package July 29, 2022, when Canada Post tried to deliver it and the Tenant refused it. I find the Landlords complied with the Rules in relation to the timing of service. Further, I do not accept the Tenant’s excuse for not receiving the Landlords’ evidence because the Tenant had a new mailbox key July 25, 2022, prior to the package being sent. As well, it is clear from the Canada Post website that they tried to deliver the package and the Tenant refused it. This is not a situation where Canada Post left notice cards in the mailbox that the Tenant did not or could not receive. The Landlords’ evidence is admissible.

Preliminary Matter – Tenant J.L.

Tenant J.L. was named on the Landlords’ Application. An issue arose during the hearing about whether Tenant J.L. continues to be a tenant in relation to this tenancy.

The Tenant said they are authorized to appear at the hearing for Tenant J.L.; however, I do not accept this in the absence of written authorization from Tenant J.L. which the Tenant did not point to during the hearing.

The parties agreed Tenant J.L. moved out of the rental unit. I find the parties knew in June of 2021 that Tenant J.L. moved out of the rental unit because both testified about discussions they had about reducing rent given Tenant J.L. had moved out. The Landlords testified that they sent the Landlords’ Application by registered mail to Tenant J.L. at the rental unit in March, June and July of 2022.

The hearing package had to be served in accordance with section 89(1) of the *Act* which only allows service by registered mail to a tenant’s residence or forwarding address. I find the Landlords did not serve Tenant J.L. in accordance with section 89(1) of the *Act* because they knew the rental unit was no longer Tenant J.L.’s residence and the rental unit is obviously not Tenant J.L.’s forwarding address. Given Tenant J.L. was not served with the Landlords’ Application in accordance with section 89(1) of the *Act*, the Landlords cannot proceed against Tenant J.L. and I have removed Tenant J.L. from the style of cause.

Settlement

During the August 15th hearing, I raised the possibility of settlement pursuant to section 63(1) of the *Act* which allows an arbitrator to assist the parties to settle the dispute. The parties were unable to come to an agreement at the August 15th hearing.

I again raised the issue of settlement at the August 22nd hearing and the parties came to an agreement. I explained to the parties that settlement discussions are voluntary.

The Landlords and Tenant agree as follows:

1. The tenancy will end, and the Tenant will vacate the rental unit by 1:00 p.m. on August 31, 2022. The tenancy is ending pursuant to the Two Month Notice to End Tenancy For Landlord's Use of Property dated June 22, 2022 (the "Notice").
2. The compensation sections of the *Act* related to the Notice apply because the tenancy is ending pursuant to the Notice.
3. All rights and obligations of the parties under the tenancy agreement continue until the tenancy ends August 31, 2022.

This agreement is fully binding on the parties.

The Landlords are issued an Order of Possession effective at 1:00 p.m. on August 31, 2022. If the Tenant does not comply with the settlement agreement set out above, this Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

Remaining Issues

The Landlords acknowledged the 10 Day Notice and One Month Notice were previously cancelled and therefore these notices to end tenancy were not addressed at the hearing and the claims related to these are dismissed without leave to re-apply.

The Landlords withdrew the requests for compensation for damage to the rental unit and compensation for monetary loss or other money owed at the August 15th hearing because these were premature.

As stated in the Interim Decision, the following are the issues I dealt with at the reconvened hearing on August 22nd:

- Landlords' request for an Order of Possession based on the Notice
- Landlords' request to recover unpaid rent
- Landlords' request to keep the security and pet damage deposits towards unpaid rent
- Landlords' request to recover the filing fee
- Tenants' request to dispute the Notice
- Tenants' request for more time to dispute the Notice
- Tenants' request for the Landlords to provide services or facilities required by the tenancy agreement or law in relation to a disconnected FOB and/or buzzer, if this remains an issue

The Landlords' request for an Order of Possession based on the Notice is moot because the parties came to a settlement agreement about this.

The Tenant confirmed the issue of the Landlords providing services or facilities required by the tenancy agreement or law is not currently an issue and therefore this is withdrawn.

The Tenant's dispute of the Notice is moot because the parties came to a settlement agreement about this.

The issues remaining are the Landlords' requests as follows:

- To recover unpaid rent
- To keep the security and pet damage deposits towards unpaid rent
- To recover the filing fee

I heard the parties on these issues. The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. In this decision, I will only refer to the evidence I find relevant to the issues.

Issues to be Decided

1. Are the Landlords entitled to recover unpaid rent?
2. Are the Landlords entitled to keep the security and pet damage deposits towards unpaid rent?
3. Are the Landlords entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started August 15, 2020, and is a month-to-month tenancy. The agreement states rent is \$2,500.00 per month due on the first day of each month. A security deposit of \$1,250.00 and a pet damage deposit of \$300.00 were paid.

The Landlords testified that the written tenancy agreement is the only tenancy agreement between the parties. The Landlords testified that rent was reduced to \$2,000.00 for June of 2021 because the Tenant was not able to pay the full rent amount. The Landlords testified that this was the only month rent was reduced and rent continued at \$2,500.00 from July of 2021 on.

The Tenant testified that rent was reduced to \$2,000.00 for June of 2021, was changed to \$2,200.00 for July of 2021 and has remained at this amount since.

The Tenant advised there was a prior RTB decision on File 249 that addressed the rent amount issue. I have reviewed File 249 which was also decided by Arbitrator M.L. Arbitrator M.L. decided the issue of the rent amount at page six of the decision where they state:

As shown by the evidence and testimony before me, the landlord has established a pattern of accepting rent payments from the tenant from July 2021 through to December 2021 with no written notices or warnings that the rent was in fact \$2,500.00. In the absence of written notice to the tenant informing them that the rent discount was only for the month of June 2021, and based on the legal doctrine of estoppel, **I find that the landlord has established that the tenant may pay a reduced amount on an ongoing basis, specifically \$2,200.00, for their monthly rent. I find that despite the original agreement for rent to be set at**

\$2,500.00, the landlord had agreed to accept rent in the amount of \$2,200.00 as of June 2021 going forward. Although the landlord and tenant may no longer be on good terms, the landlord may not unilaterally revoke this right without permission of the tenant or by way of mutual agreement to do so. I find that the tenant has established that the landlord had agreed to accept rent payments in the amount of \$2,200.00 without penalty or requirement to reimburse the landlord the difference from the original amount...(emphasis added)

As stated, this matter originally went before Arbitrator M.L. and they wrote an Interim Decision in this matter. The Landlords took the position that Arbitrator M.L. allowed them to re-argue the issue of the rent amount. However, Arbitrator M.L. wrote the following at pages one to two of the Interim Decision:

I note that the landlord's application does include monetary claims that relate to the same tenancy. Although some of the issues raised as part of this application did form part of the landlord's case in the last hearing, the last hearing **did not deal with any specific monetary applications for money owed** by the tenant. I am not satisfied that these monetary matters were already decided, and therefore I do not find these claims to be res judicata **the merits of the landlords' monetary claims had yet to be decided.** For this reason, the landlords' **monetary claims may still be considered.** (emphasis added)

In relation to unpaid rent, the Landlords relied on an outline of rent owing in their written materials which shows the following:

June \$500.00
July \$200.00
August \$300.00
September \$300.00
October \$300.00
November \$300.00
December \$300.00
January \$300.00
February \$300.00

The Tenant testified that no rent is outstanding due to the rent reductions that occurred in June and July of 2021.

Analysis

Section 26 of the *Act* states:

26 (1) 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.

I find the issue of the rent amount was decided in File 249 and cannot be re-argued. Arbitrator M.L.'s Interim Decision only allowed the Landlords to continue with their monetary claims against the Tenant, it did not allow the Landlords to re-argue the issue of the rent amount. As already decided in File 249, I find the rent amount has been \$2,200.00 since July 2021. I acknowledge that the decision on File 249 says rent has been \$2,200.00 since June 2021; however, the parties agreed during these hearings that rent was reduced to \$2,000.00 for June 2021 and therefore, I find rent was \$2,000.00 for June 2021 and \$2,200.00 from July 2021 on.

The Landlords are attempting to collect \$500.00 for June 2021 rent despite acknowledging they agreed to a rent reduction for this month. The Landlord cannot agree to a rent reduction and then change their mind about it later. The Tenant does not owe for June 2021 rent.

It is my understanding from the Landlords' submissions that the outstanding rent claimed is based on the disagreement between the parties about the rent amount. Given the rent amount was already determined in File 249 to be \$2,200.00 from July 2021 on, I am not satisfied there is any rent outstanding given the Landlords' calculation is based on rent being \$2,500.00. I dismiss the Landlords' claim for unpaid rent without leave to re-apply.

The Landlords are not entitled to keep the security or pet damage deposits towards unpaid rent because I am not satisfied there is unpaid rent owing.

I award the Landlords the \$100.00 filing fee pursuant to section 72(1) of the *Act* because the parties came to an agreement that the Notice is valid, and the Landlords have been issued an Order of Possession based on the Notice. Pursuant to section 72(2) of the *Act*, the Landlords can keep \$100.00 from the security deposit.

Conclusion

The Landlords are not entitled to recover unpaid rent and are not entitled to keep the security or pet damage deposits towards unpaid rent. The Landlords are entitled to recover the \$100.00 filing fee and can keep this from the security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 30, 2022

Residential Tenancy Branch