



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant: CNR

For the landlords: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with a cross application. The tenant's application pursuant to the Residential Tenancy Act (the Act) is for cancellation of the 10 day Notice to End Tenancy for unpaid Rent or Utilities (the Notice), under section 46 of the Act.

The landlords' application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, under section 26; and
- an authorization to recover the filing fee, pursuant to section 72.

Tenant EB (the tenant) and landlord AD (the landlord) attended the hearing. The landlord represented landlord AB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

Preliminary Issue – Service

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

The landlord served an amendment via registered mail on August 08, 2022.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the landlord's convincing testimony, the tenant is deemed to have received the amendment on August 13, 2022, in accordance with section 90 (a) of the Act.

The hearing was on August 23, 2022.

Rule of Procedure 4.6 states:

4.6 Serving an Amendment to an Application for Dispute Resolution

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) not less than 14 days before the hearing.

Per Rule of Procedure 4.6, I did not accept the tenant's amendment, as it was served late.

Preliminary Issue – Update of the Tenancy Address

At the outset of the hearing the landlord corrected the tenancy address.

Pursuant to section 64(3)(a) of the Act, I have amended the applications.

Preliminary Issue – Vacant Rental Unit

At the hearing both parties agreed the tenant moved out on June 21, 2022. The applications for the cancellation of the Notice and for an order of possession are moot since the tenancy has ended.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to

dismiss the tenant's application for cancellation of the Notice and the landlord's application for an order of possession.

Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend his application for \$5,900.00 in unpaid rent of March and April 2022 to include an additional \$5,900 for the unpaid rent of May and June 2022 and \$175.13 for unpaid utilities.

The increase in the landlord's monetary claim for unpaid rent of May and June 2022 should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$11,800.00.

The landlord did not indicate in the application that he was seeking a monetary order for unpaid utilities. I find the landlord's request to amend the application to include a request for a monetary order for unpaid utilities should not be reasonably anticipated by the tenant and, as such, I deny this request.

Issues to be Decided

Are the landlords entitled to:

1. a monetary order for unpaid rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlords' obligation to present the evidence to substantiate the application.

Both parties agreed the tenancy started on March 15, 2021 and ended on June 21, 2022. Monthly rent when the tenancy ended was \$2,950.00, due on the fifteenth day of the month. At the outset of the tenancy a security deposit (the deposit) of \$1,475.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

Both parties agreed the landlord served and the tenant received the Notice in person on April 17, 2022.

A copy of the Notice was provided. The Notice is dated April 17, 2022 and the effective date is April 27, 2022. It states the tenant failed to pay rent in the amount of \$5,900.00 due on March 15 and April 15, 2022 and utilities in the amount of \$175.13 due on April 8 and 16, 2022.

The tenant does not remember when he paid March 2022 rent. The tenant affirmed he is owing rent due on April, May and June 15, 2022.

The landlord stated the tenant did not pay rent in March, April, May and June 2022.

The landlord testified he was not able to rent the house in June 2022 and he is claiming for the unpaid rent due on June 15, 2022.

The landlord submitted a direct request worksheet indicating the tenant did not pay rent in March and April 2022.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

The tenant disputed the Notice and voluntarily left the rental unit on June 21, 2022. I find the tenancy ended on June 21, 2022, per section 44(d) of the Act.

The tenant's testimony about paying rent due on March 15, 2022 was vague. Based on the landlord's convincing testimony, the Notice and the direct request worksheet, I find the tenant did not pay rent due on March 15, 2022 in the amount of \$2,950.00.

I accept both parties' uncontested testimony that the tenant did not pay rent due on April, May and June 15, 2022.

Per section 26(1) of the Act, I award the landlord unpaid rent from March 15 to June 14 in the amount of \$8,850.00 ($\$2,950.00 \times 3$) and \$688.30 from June 15 to 21, 2022 ($\$2,950.00 / 30 \times 7$ days). Thus, I award the total amount of \$9,538.30 for unpaid rent from March 15 to June 14, 2022.

I dismiss the landlord's claim for the balance of unpaid rent in June 2022 (\$2,950.00 subtracted \$688.30), as the tenancy ended on June 21, 2022 and the landlord did not apply for loss of rental income.

Filing fee and summary

As the landlords were successful, the landlords are entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlords to retain the \$1,475.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent	9,538.30
Filing fee	100.00
Subtotal	9,638.30
Deposit	1,475.00 (minus)
Total:	8,163.30

Conclusion

Per sections 26, 67 and 72 of the Act, I authorize the landlords to retain the \$1,475.00 deposit and award the landlords \$8,163.30. The landlords are provided with this order in the above terms and 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: August 24, 2022

Residential Tenancy Branch