



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for failure to pay rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

Tenant:

- cancellation of the landlord’s 10 Day Notice to End Tenancy for unpaid rent pursuant to section 46 (the 10 Day Notice).

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:10 a.m. The landlord attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord testified that on May 28, 2022, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant(s) by registered mail. The landlord provided a registered mail receipt and tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. Additionally, as this hearing was initially scheduled in response to the tenant’s own application, the tenant ought to have been aware of the hearing date and time.

As the tenant failed to participate in this hearing, the tenant's application is dismissed in its entirety without leave to reapply. The hearing into the landlord's application proceeded in the absence of the tenant.

Preliminary Issue – Amendment to Landlord's Application

Section 64(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant did not vacate the rental unit until August 15, 2022 and therefore asked to amend his claim to include outstanding rent for the months of June 2022 through August 2022. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

In the hearing, the landlord confirmed that he already obtained an order of possession on August 2, 2022 in a previous proceeding; therefore, the only matter outstanding was the landlord's claim for unpaid rent.

Issues

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began on December 1, 2021 with a monthly rent of \$1695.00 payable on the 1st day of each month. The tenant paid a security deposit of \$850.00 at the start of the tenancy which the landlord continues to hold.

The landlord submitted a copy of a 10 Day Notice served to the tenant on May 2, 2022 after he failed to pay May 2022 rent. The landlord testified the tenant did not pay any rent from May 2022 through to August 2022. The landlord testified that they were able to get the tenant evicted from the rental unit on August 15, 2022.

The landlord's amended monetary claim is for outstanding rent in the amount of \$6780.00 as per below:

Item	Amount
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May 2022	1695.00
June 2022	1695.00
July 2022	1695.00
August 2022	1695.00
Total Monetary Order Sought	\$6780.00

Analysis

Section 26 of the Act requires that 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.

The tenants filed to dispute the 10 Day Notice within the time limit permitted under the Act. However, the tenants failed to participate in this hearing and present any evidence to support why the 10 Day Notice should be cancelled. Accordingly, the tenant's application is dismissed in its entirety without leave to reapply.

I find that the tenant was obligated to pay monthly rent in the amount of \$1695.00 but failed to pay rent for the period of May 2022 through to August 2022. I accept the landlord's claim for outstanding rent of \$6780.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$6880.00.

The landlord continues to hold a security deposit of \$850.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$6030.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$6030.00. 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: September 26, 2022

Residential Tenancy Branch