



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, CNR, FFT / MNR-DR, OPR-DR, FFL, MNDL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “Act”). The landlords’ application for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for damage to the rental unit and for unpaid rent and utilities in the amount of \$7,584.41 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

And the tenant’s application for:

- the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,763.33 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:24 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. The landlords’ property manager (“SW”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that SW and I were the only ones who had called into the hearing.

Preliminary Issue – Service

SW testified that she served the tenant with the landlords’ notice of dispute resolution proceeding package, documentary evidence, and amendment (adding a claim for additional unpaid rent) via email. She submitted copies of these emails into evidence.

Sections 88 and 89 of the Act set out the permitted modes of service. They do not include email. However, Section 43 of the *Residential Tenancy Regulation* states that documents served pursuant to these sections “may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.”

SW testified that all of the communication between the parties during the tenancy was via email and that the tenant had served the landlords via her notice of dispute resolution package and supporting evidence via email. On the tenant's notice of dispute resolution form, she indicated that the Notice was "sent to a pre-agreed email". From this, I conclude that the tenant previously agreed that she could be served via email.

Accordingly, I find that the tenant has been served with the landlords' documents in accordance with the Act.

Preliminary Issue - Effect of the Tenant's Non-Attendance

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, for the tenant's application, the tenant bears the burden of proof to prove her entitlement to the monetary order she seeks, whereas the landlords bear the burden of proof to show that the Notice is valid.

The landlords bear the burden of proof for all portions of their application.

At the outset of the hearing, SW stated that the tenant vacated the rental unit on June 28, 2022. Accordingly, the landlord no longer requires an order of possession and the issue of the validity of the Notice is moot. I dismiss the tenant's application to cancel the Notice and the landlords' application for an order of possession. All that remains are the parties' respective monetary claims.

Rules of Procedure 7.3 and 7.4 state:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

As the tenant did not attend the hearing, I decline to consider her documentary evidence and find that she has failed to discharge her evidentiary burden to prove her entitlement to the monetary order sought. I dismiss the balance of her application, without leave to reapply.

Issues to be Decided

Are the landlords entitled to:

- 1) a monetary order for \$7,584.41;
- 2) retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made; and
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of SW, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The prior owners of the rental unit and tenant entered into a written tenancy agreement starting September 20, 2019. SW testified that the landlords assumed possession of the rental unit in April 2021 and with it assumed the role of landlord pursuant to the tenancy agreement. Monthly rent was \$3,500 plus utilities. The tenant paid the prior owners a security deposit of \$1,750 and a pet damage deposit of \$1,750, which was transferred to the landlords when they purchased the rental unit and which the landlords continue to hold in trust for the tenant.

SW testified that the tenant did not pay any rent for the months of May or June 2022. She testified that the landlords consented to a \$300 deduction to May's rent to account for cleaning costs the tenant incurred resulting from the replacement of a portion of the rental unit's roof (which I understand was a point of contention between the parties and the reason the tenant made her application).

Additionally, SW testified that the tenant failed to pay the municipal utility bill for the period of April 1 to June 30, 2022 in the amount of \$484.41. She submitted an invoice from the municipality for this amount confirming this charge.

As stated above, the tenant vacated the rental unit on June 28, 2022. The parties conducted a move out condition inspection that day and completed a move out condition inspection report. On this inspection report, the tenant indicated that she agreed that the landlord could deduct \$400 from the security deposit in satisfaction of the damages listed thereon (failure to clean the carpets and the need to replace the front door lock). The landlord seeks a monetary order for this amount as well.

In summary, the landlord seeks a monetary order of \$7,584.41, calculated as follows:

Description	Amount
May arrears (less \$300 deduction)	\$3,200.00
June arrears	\$3,500.00
Utilities (April 1 to June 30, 2022)	\$484.41
Amount tenant consented to be withheld from deposit	\$400.00
Total	\$7,584.41

Analysis

Section 26 of the Act states:

Rules about payment and non-payment of rent

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.

Based on SW's testimony, I find that the tenant failed to pay any rent for May or June 2022. I accept that the tenant was permitted to deduct \$300 from May's rent. Accordingly, the tenant owes \$6,700 in arrears for these months. I order that she repay the landlords this amount.

I accept SW's testimony, supported by the invoice submitted into evidence, that the tenant is responsible for paying utilities, and that she failed to pay the municipal utility bill for the period of April 1 to June 30, 2022 in the amount of \$484.41. Accordingly, I order that she pay the landlord this amount.

Finally, based on the condition inspection report submitted into evidence, I accept that the tenant agreed that the landlords could deduct \$400 from the security deposit as compensation for the cost of cleaning the carpets and installing a new front door lock. I order that the landlords may retain this amount from the security deposit.

Pursuant to section 72(1) of the Act, as the landlords have been successful in the application, they may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlords may retain the security deposit and pet damage deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenant pay the landlords \$4,184.41, representing the following:

Description	Amount
May arrears (less \$300 deduction)	\$3,200.00
June arrears	\$3,500.00
Utilities (April 1 to June 30, 2022)	\$484.41
Amount tenant consented to be withheld from deposit	\$400.00
Filing fee	\$100.00
Deposit credit	-\$3,500.00
Total	\$4,184.41

I order the landlords to serve the tenant with a copy of this decision and the attached monetary order as soon as reasonably possible after receiving these documents from the Residential Tenancy Branch.

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