



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: Tenants: CNR-MT, FFT, RP, RR
Landlord: OPR-DR, MNR-DR, FFL

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:

The landlord requested:

- an Order of Possession for unpaid rent pursuant to section 55; and
- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants requested:

- more time to make an application to cancel the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the landlord attended the hearing by way of conference call, the tenants did not. I waited until 9:41 a.m. to enable the tenants to participate in this scheduled hearing for 9:30 am. The landlord 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 Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. The landlord confirmed that they understood.

Rule 7.3 of the Rules of Procedure provides as follows:

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.

Accordingly, **in the absence of any submissions in this hearing from the tenants, I order the tenants' entire application dismissed without leave to reapply.**

At the outset of the hearing, the landlord confirmed that the tenants had moved out, and that they no longer require an Order of Possession. Accordingly, the hearing proceeded to deal with the monetary applications only.

The landlord gave sworn testimony that copies of the Application for Dispute Resolution hearing package ('Application') and evidence were personally served on the tenants by a friend on June 11, 2022. In accordance with sections 88 and 89 of the *Act*, I find that the tenants duly served with the landlord's application and evidence. The landlord confirmed receipt of the tenants' hearing package and evidentiary materials.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent or money owed under the tenancy agreement, regulation, or *Act*?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applications before me and my findings around it are set out below.

The landlord testified to the following facts. This fixed term tenancy began on November 1, 2021, and was to end on November 1, 2022. Monthly rent is set at \$1,400.00, payable on the first of the month. The landlord still holds the security and pet damage deposits of \$700.00 each.

The landlord personally served the tenants with a 10 Day Notice to End Tenancy on May 1, 2022 for failing to pay the April 2022 rent. The landlord testified that the tenants have not paid any rent since being served with the 10 Day Notice, and owe rent for April and May 2022. The landlord testified that the tenants moved out approximately two months before the hearing. The landlord confirmed in the hearing that they are requesting a Monetary Order for the unpaid rent for these two months plus the filing fee.

Analysis

Section 26 of the Act, in part, states as follows:

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.

The landlord provided undisputed evidence that the tenants failed to pay any rent for April and May 2022. Therefore, I find that the landlord is entitled to \$2,800.00 in arrears for the above period.

The landlord continues to hold the tenants' security and pet damage deposit totalling \$1,400.00. In accordance with the offsetting provisions of section 72 of the Act, I order the landlord to retain the tenants' deposits in partial satisfaction of the monetary claim.

I find that the landlord is entitled to recovery the \$100.00 filing fee from the tenants.

Conclusion

I dismiss the tenants' entire application without leave to reapply.

I issue a \$1,500.00 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover the unpaid rent and the filing fee, and also allows the landlord to retain the tenants' deposits in partial satisfaction of the money owed.

Item	Amount
Unpaid Rent for April & May 2022	\$2,800.00
Recovery of Filing Fee	100.00
Less Security and Pet Damage Deposit	-1,400.00
Total Monetary Order	\$1,500.00

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 landlord withdrew their application for an Order of Possession as the tenants had moved out.

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 21, 2022

Residential Tenancy Branch