



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an Order of Possession for unpaid rent, pursuant to sections 46 and 55;
- an Order of Possession for cause, pursuant to sections 47 and 55;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenant, pursuant to section 72.

The landlord's agent (the "agent"), tenant G.W. and tenant G.W.'s advocate (the "advocate") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution 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."

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The agent testified that the tenants were personally served with the landlord's application for dispute resolution and evidence on August 8, 2022. Tenant G.W. testified that the above documents were posted on the tenants' door on August 8, 2022 and were received on August 8, 2022. I find that the tenants were sufficiently served on August 8, 2022, for the purposes of this *Act*, pursuant to section 71 of the *Act*, because receipt was acknowledged on that date.

The agent testified that tenant G.W. was personally served with the landlord's amendment in which the agent was identified as the landlord's agent, on October 7, 2022. The tenant testified that he did not receive the above amendment. While the parties dispute the service of the amendment, I find that the point is moot because the landlord is permitted to name an agent and I accept the agent's testimony that he is the agent of the landlord.

The tenant testified that the tenant's evidence, which was posted to the Residential Tenancy Branch Dispute Management System on October 25, 2022, the day of the hearing, was not served on the landlord.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states that the Respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. As the landlord was not served with the tenant's evidence and the Residential Tenancy Branch was not served seven clear days before the hearing, I exclude the tenant's evidence from consideration.

Preliminary Issue- Amendment

The advocate submitted that tenant G.W.'s first name is spelt incorrectly in this application for dispute resolution. The advocate provided the correct spelling in the hearing. The agent did not dispute the above testimony.

Pursuant to section 64 of the *Act*, I amend the landlord's application for dispute resolution to correctly spell tenant G.W.'s first name.

Preliminary Issue- End of Tenancy

Tenant G.W. testified that he moved out of the subject rental property a month after a fire occurred in the suite above the subject rental property. Tenant G.W. testified that the fire occurred on February 20, 2022. The agent did not dispute that the fire to the upstairs unit occurred on February 20, 2022.

The advocate submitted that tenant J.W. moved out 6-7 months ago. The above submission was not disputed by the agent. The agent testified that tenant G.W. moved out of the subject rental property in June of 2022.

Both parties agree that tenant G.W. moved into a fifth wheel owned by tenant G.W. and that this fifth wheel is parked in the landlord's driveway.

Based on the testimony of both parties, I find that the tenancy at the subject rental property has ended as it was undisputed that tenant J.W. moved out months ago and both parties agree that tenant G.W. no longer resides in the unit. I find that the landlord's application for Orders of Possession are no longer relevant or required as the tenancy has ended. The landlord's application for Orders of Possession are therefore dismissed without leave to reapply.

I note that I do not have authority to make order of possession against the fifth wheel in this application as this application was made against the subject rental property, not the fifth wheel which is separate and apart from the tenancy agreement for the subject rental property.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 26 and 67 of the *Act*?
2. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
3. Is the landlord entitled to recover the filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

The advocate submitted that tenant G.W.'s mother and stepfather rented the unit above the subject rental property and after that tenancy started, tenant G.W. moved into the upstairs unit with them. The landlord entered into evidence the tenancy agreement between the previous landlord and tenant G.W.'s stepfather, tenant G.W. is listed as an occupant. The advocate testified that tenant G.W. agreed to pay an additional \$450.00 per month when he moved in to the unit above the subject rental property.

The advocate submitted that shortly after moving in with his mother and stepfather, tenant G.W. entered into an oral tenancy agreement with the previous landlord to live in the unit below his mother and stepfather (the subject rental property) for \$450.00 per month. The advocate submitted that tenant G.W.'s girlfriend (tenant J.W.) sometimes lived with him, and when she did, tenant G.W. paid the landlord \$900.00 per month. The tenant testified that sometimes his rent was paid in full by the Ministry, and sometimes he paid rent in cash.

The agent testified that the One Month Notice to End Tenancy for Cause (the "One Month Notice") was served on the tenants because after the fire, City Inspectors told the landlord that the tenants had to leave. The advocate confirmed that he tenant received the One Month Notice.

The One Month Notice was entered into evidence, is signed by the landlord, is dated March 13, 2022, gives the address of the rental unit, states that the effective date of the notice is March 24, 2022, is in the approved form, #RTB-33, and states the following ground for ending the tenancy:

Rental unit/site must be vacated to comply with a government order.

The Details of Cause section of the Notice states:

[The subject rental township] building permit department and [The subject rental township] gave government order to vacated [sic] the rental units.

The advocate submitted that after the upstairs unit caught fire, the landlord told tenant G.W. that tenant G.W. could live in tenant G.W.'s fifth wheel until he found a new place to live and did not have to pay rent.

The agent testified that the landlord purchased the subject rental property in 2020 and that since that time, rent has been \$1,440.00 due on the first day of each month. The agent testified that for the first three months after the landlord purchased the property, the Ministry paid \$450.00 per month towards tenant G.W.'s rent, and tenant G.W. paid an additional \$990.00 in cash. The agent testified that after three months the Ministry stopped paying rent money for tenant G.W. and tenant G.W. paid the landlord cash in the amount of \$1,440.00 per month.

The agent testified that tenant G.W. has not paid any rent for March 2022 to July 2022. The agent testified that the landlord is seeking \$7,200.00 in unpaid rent. The agent testified that the landlord did not provide the tenants with rent receipts for the cash payments received. The only documentary evidence pertaining to rent payments made between the parties is a Word document which states:

I didn't receive any rental fee from February 2022,
Here is the form:

End of February 2022	1440	for March rental
End of March 2022	1440	for April rental
End of April 2022	1440	for May rental
End of May 2022	1440	for June rental
End of June 2022	1440	for July rental

No ledger, or receipts were entered into evidence. The advocate submitted that no rent was due after the fire. The agent testified that the landlord never agreed that tenant G.W. did not have to pay rent or that tenant G.W. could stay rent free on the landlord's property in the fifth wheel.

The landlord's application for dispute resolution states that the landlord received a security deposit in the amount of \$600.00. The agent testified that the previous landlord provided the landlord with the security deposit from the upstairs and downstairs suites but the landlord was not made aware of what amount was provided by each unit. Tenant G.W. testified that he paid a security deposit of \$250.00.

Analysis

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the tenant's claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

The agent testified that rent of \$1,440.00 was due on the first day of each month. The advocate submitted that rent in the amount of \$450.00 was due each month up until the fire (February of 2022) and that rent was not payable from March 2022 onwards.

The landlord, who bears the burden of proof, did not provide any credible documentary evidence establishing what rent was due each month or the history of rent payments made from 2020 to the present date. I find that the Word document is not a business document prepared in the course of being a landlord but is a summation of the landlord's claim made in preparation for this hearing. I give it little weight and find that it does not prove the amount of rent owed by the tenants to the landlord each month.

The testimony of the parties regarding when the tenancy ended, that being March 2022 versus June 2022 is disparate. I find that the landlord has not proved, on a balance of probabilities, what months the tenant resided in the unit or what the agreement was on rent payable after the fire. As the landlord has not proved the amount of rent due per month, the duration of the tenancy or what rent was payable after the fire, I find that the

landlord has not proved the value of any loss suffered and has not proved that the tenants breached the *Act*. I therefore dismiss the landlord's monetary claim without leave to reapply.

As the landlord's monetary claim was dismissed, I find that the landlord is not entitled to retain the tenants' security deposit. As the landlord was not successful in this application for dispute resolution, I find that the landlord is not entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72 of the *Act*.

Conclusion

The landlord's application is dismissed without leave to reapply.

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: October 25, 2022

Residential Tenancy Branch