



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, OPM, MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held on December 22, 2022. The Landlord applied for multiple remedies pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Landlord testified that he sent a copy of the Notice of Dispute Resolution Proceeding and evidence by email on August 19, 2022. The Landlord confirmed that he received an Order for Substituted service, allowing him to serve the Tenant via email. Pursuant to that Order, I find the Tenant is deemed served with the Notice of Dispute Resolution Proceeding and evidence package sent by email on August 22, 2022, 3 days after it was sent.

The Landlord subsequently filled out an amendment form, and submitted that to the RTB. The Landlord stated he sent this amendment, with his new evidence and worksheet to the Tenant via email on December 6, 2022. Pursuant to the Substituted Service Order, I find the Tenant is deemed to have received this amendment 3 days after the email was sent, on December 9, 2022.

As stated in the hearing, the Landlord was required, as per Rule 3.14, to ensure the respondent received these documents no later than 14 days before the hearing, which would have been December 8, 2022, at the latest. As this was not done, I find the Landlord has failed to serve his amendment in time, and it will not be considered. The Landlord has leave to reapply for any issues on his amendment, and this hearing will only deal with the issues laid out on the initial application form.

The initial issues on the application were related to an Order of Possession, and for a monetary order for unpaid rent. The Landlord stated that the tenancy is now over, and he no longer needs an order of possession. As such, the only remaining item on this application is the issue regarding a monetary order for unpaid rent.

The Landlord initially applied for unpaid rent that had accrued as of the time of his application in August 2022. However, rent has accrued since this time.

I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Landlord to amend his application to include rent that has accrued since the original application date.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Landlord testified that rent, in the amount of \$1,725.50, is due on the first day of each month. The Landlord holds a security deposit of \$850.00.

The Landlord testified that he served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use (the Notice) on or around April 30, 2022, with an effective date of June 30, 2022. Following this, the Landlord stated that the Tenant asked for more time to move out and the Landlord stated they agreed, via the mutual agreement, and amended tenancy agreement, that the Tenant would be allowed to stay in the rental unit for an extra month, until the end of July 2022, but that she would give up her free month's rent, which she would otherwise be entitled to based on the Notice.

The Landlord stated that the Tenant never moved out as agreed, and she also stopped paying rent. The Landlord stated that the Tenant moved out October 11, 2022.

The Landlord summarized the rent owing as follows:

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
June 1, 2022	Rent Due	\$1,725.50	\$700.00	\$1,025.50
July 1, 2022	Rent Due	\$1,725.50	\$0.00	\$2,751.00
August 1, 2022	Rent Due	\$1,725.50	\$1,000.00	\$3,476.50
Sep 1, 2022	Rent Due	\$1,725.50	\$0.00	\$5,202.00
Accrued Balance				\$5,202.00

Then, the Landlord stated that the Tenant also failed to pay rent for October 2022, and moved out on October 11, 2022, so he is seeking a per diem rate of \$55.66, for 11 days, which is \$612.27. This amounts to \$5,814.27 in unpaid rent.

The Landlord is also seeking the \$100.00 per month late rent fee, as per term #25 of the tenancy agreement (5 months). IN total the Landlord is seeking \$6,314.27 for the above noted items.

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent.

In this case, I accept the undisputed testimony and evidence, and I find that the tenant owed \$5,814.27 in unpaid rent at the time she moved out on October 11, 2022.

With respect to the late fee, I note the following portion of the regulations:

Non-refundable fees charged by landlord

7 (1)A landlord may charge any of the following non-refundable fees:

(d)subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

I award \$25.00 per month for late rent fee, in accordance with the regulations, rather than what is listed on the tenancy agreement. I award \$125.00.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was partially successful with his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Rent	\$5,814.27
Late Fees	\$125.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$850.00)
TOTAL:	\$5,189.27

Conclusion

The landlord is granted a monetary order pursuant to Section 67 in the amount of **\$5,189.27**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: December 23, 2022

Residential Tenancy Branch