



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

RTB-136

DECISION

Dispute Codes For the tenant: CNR, CNC-MT, OLC, FFT
For the landlord: OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The tenant's application pursuant to the Residential Tenancy Act (the Act) is for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice), pursuant to section 46;
- cancellation of the One Month Notice to End Tenancy for Cause (the One Month Notice), pursuant to section 47;
- an extension of the timeline for disputing the One Month Notice, pursuant to section 66;
- an order requiring the landlord to provide services or facilities as required by the tenancy agreement or the Act, pursuant to section 62; and
- an authorization to recover the filing fee for this application, under section 72.

The landlord's application pursuant to the Act is for:

- an order of possession under the 10 Day Notice, pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:45 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by agent AK (the landlord), 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 Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending party was clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits

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the recording of a dispute resolution hearing. The attending party confirmed she understood the Rules of Procedure.

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 \$5,000.00.”

Preliminary Issue – Service

The landlord affirmed that landlord PK served the notice of hearing and the evidence (the landlord’s materials) in person to the tenant on August 27, 2022 at the rental unit and the amendment on November 01, 2022 in person at the rental unit. The landlord affirmed that she witnessed the tenant receiving the materials and the amendment.

The landlord confirmed receipt of the tenant’s notice of hearing (the tenant’s materials) and that she had enough time to review it.

Based on the convincing testimony offered by the landlord, I find that landlord PK served the landlord’s materials and the amendment, and the tenant served the tenant’s materials in accordance with section 89 of the Act.

Preliminary Issue – Vacant Rental Unit

The landlord affirmed the tenant moved out on November 01, 2022.

All the tenant’s claims and the landlord’s claim for an order of possession are moot since the tenancy has ended and the landlord has possession of the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the tenant’s application in its entirety and the landlord’s claim for an order of possession.

The tenant must bear the filing fee, as the tenant was not successful.

Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on September 01, 2020. Monthly rent is \$1,000.00, due on the first day of the month. At the outset of the tenancy a security deposit (the deposit) of \$500.00 was collected and the landlord holds it in trust.

The landlord affirmed the tenant paid rent in the amount of \$750.00 in July 2022 and did not pay rent in August, September and October 2022.

The landlord's amendment dated November 01, 2022 indicates the tenant did not pay the balance of July 2022 rent in the amount of \$250.00, and did not pay rent in August, September and October 2022.

The tenant is claiming the balance of July 2022 rent (\$1,000.00 subtracted \$750.00) and the unpaid rent for August, September and October 2022 (\$1,000.00 per month). The total rental arrears are \$3,250.00.

Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Based on the landlord's convincing testimony, I find the parties agreed to a monthly rent in the amount of \$1,000.00, due on the first day of the month.

The tenant disputed the 10 Day Notice and the One Month Notice and voluntarily left the rental unit on November 01, 2022. I find the tenancy ended on November 01, 2022, per section 44(d) of the Act.

Based on the landlord's convincing testimony and the amendment, I find the tenant only paid \$750.00 for July 2022 rent and did not pay rent due on August, September and October 01, 2022.

Per section 26(1) of the Act, I award the landlord the balance of July 2022 rent in the amount of \$250.00 (\$1,000.00 subtracted \$750.00) and the unpaid rent of August, September and October 2022 in the amount of \$3,000.00 (\$1,000.00 per month x 3 months).

Thus, I award the total amount of \$3,250.00 for unpaid rent from July 01 to October 31, 2022.

As the landlord was successful, the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$500.00 deposit in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent	3,250.00
Filing fee	100.00
Subtotal	3,350.00
Deposit	500.00 (minus)
Total:	2,850.00

Conclusion

Per sections 26, 67 and 72 of the Act, I authorize the landlord to retain the \$500.00 deposit and award the landlord \$2,850.00. The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: January 09, 2023

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