



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR / OPR-DR, FFL / OPR, MNDCL-S, FFL

Introduction

This hearing dealt with three applications pursuant to the *Residential Tenancy Act* (the “**Act**”):

- 1) The landlord’s application against tenant NU for:
 - a. authorization to retain all or a portion of the security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
 - b. an order of possession for non-payment of rent pursuant to section 55;
 - c. a monetary order for unpaid rent in the amount of \$2,240 pursuant to section 67; and
 - d. authorization to recover the filing fee for this application from the tenants pursuant to section 72.

(“**Application 345**”)
- 2) The landlord’s application against tenants NU and JB for:
 - a. an order of possession for non-payment of rent pursuant to section 55; and
 - b. authorization to recover the filing fee for this application from the tenants pursuant to section 72.

(“**Application 308**”)
- 3) Tenant NU’s application for:
 - a. the cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46.

(“**NU’s Application**”)

Neither tenant attended this hearing, although I left the teleconference hearing connection open until 9:58 am to enable them to call into the hearing scheduled to start at 9:30 am. The landlord and her lawyer (“**AE**”) attended the hearing and were 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.

The landlord testified that JB vacated the rental unit in June 2022 and that bailiff removed NU from the rental unit, pursuant to an order made by a different arbitrator of the Residential Tenancy Branch (the “**RTB**”), on December 22, 2022. AE stated that the landlord no longer requires an order of possession. Accordingly, a portion of Application

345 and all of Application 308 and NU's application are now moot. I dismiss the portion on Application 345 and Application 308 and NU's Application without leave to reapply.

Preliminary Issue – Amendment of Application 345

The landlord provided the RTB with a supplemental evidence package for Application 345 in early January 2023. Among the documents provided was a Landlord Request to Amend a Dispute Resolution Application form (#RTB-42L). She did not file this form with the RTB, and no notice amended notice of dispute resolution was issued by the RTB. AE stated that the landlord did not serve any of these documents on NU, as she does not have a forwarding address for him.

The monetary claims listed on the unfilled request to amend are for the following:

- 1) increased monetary claim for five months of unpaid rent (\$5,600);
- 2) bailiff fees (\$4,042.09);
- 3) cleaning and disposal costs (\$2,035.01) and
- 4) estimated cost of restoration (\$10,000).

AE asked that I order Application 345 be amended, at the hearing, to include these claims.

RTB Rule of Procedure 4.2 permits amendments to be made at a hearing, in some circumstances. It states:

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.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, as NU was not served with the unfilled request to amend form, or any of the supporting documentary evidence, I do not find that he could have reasonably anticipated that the application would be amended to include a claim for bailiff fees, cleaning and disposal costs, or the estimated cost of restoration. He could not have known the amounts the landlord seeks to recovery for these associated costs. Accordingly, I dismiss the landlord's request to amend Application 345 to include those claims. The landlord may make a new claim on those grounds.

The landlord testified that the tenants did not pay any rent for September, October, November, or December, 2022 (four months). NU was removed from the rental unit on December 22, 2022. The landlord argued that she should be able to amend her claim to

recover rent for January and February 2023, as the condition that the tenant left the rental unit in has prevented her from re-renting it.

A tenant's obligation to pay rent arises out of the tenancy agreement. When the tenancy agreement is terminated (as is the case here, when the bailiff removed NU from the rental unit), a tenant is no longer obligated to pay rent pursuant to that agreement. A landlord may apply for a monetary order for loss of ability to generate rent from a rental unit due to a tenant's breach of the Act (for example, due to a tenant's failure to repair damage to the rental unit caused by them). However, such a claim is of a different nature and engages a different analysis than a claim for non-payment of rent.

In the circumstances, I do not find that such a claim could have been reasonably anticipated by NU. I decline to amend Application 345 to include a claim for loss of ability to generate rent from a rental unit for January and February 2023. The landlord may make a separate claim to recover these amounts.

I will, however, amend Application 345 to include a claim to recover unpaid rent for November and December 2022, as such an amendment is explicitly permitted by Rule 4.2.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order against tenant NU for \$4,480;
- 2) recover the filing fee; and
- 3) retain the security deposit and the pet damage deposit in partial satisfaction of the monetary orders made?

Background and Evidence

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

The tenants and the prior owner of the rental unit entered into a tenancy agreement starting January 1, 2020. The landlord purchased the rental unit from the prior owner in 2021. The landlord and the tenants entered into "renewal" of the original tenancy agreement on April 30, 2021. This agreement states that the tenancy will continue for a fixed term ending April 30, 2022 and that rent is \$1,100. On March 7, 2022, the parties entered into a further "renewal" for a fixed term ending April 30, 2023. Monthly rent was set at \$1,100 plus \$20 for utilities. The tenants paid the landlord a security deposit of \$550 and a pet damage deposit of \$200, which the landlord continues to hold in trust for the tenants.

As stated above, JB vacated the rental unit in June 2022. Neither JB nor NU paid any rent or utilities costs for September, October, November, or December 2022.

A bailiff removed NU from the rental unit on December 22, 2022.

Analysis

Pursuant to the second renewal agreement, the tenants are required to pay the landlord \$1,120 for rent and utilities per month.

Section 26(1) 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.

I accept the landlord's undisputed testimony that the tenants have not paid any rent or utilities for the months of September to December 2022 (inclusive), in the amount of \$4,480. The tenants were required to pay this amount pursuant to the tenancy agreement.

As the landlord has only applied against tenant NU in Application 345, I order that NU pay the landlord \$4,480 in satisfaction of the unpaid arrears.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the Application 345, she may recover the filing fee from NU (\$100).

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

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that tenant NU pay the landlord \$3,830, representing the following:

Description	Total
Arrears (September to December 2022)	\$4,480.00
Filing fee	\$100.00
Security and pet damage deposit credit	-\$750.00
	\$3,830.00

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 30, 2023

Residential Tenancy Branch