



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL MNDCL FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order in the amount of \$815.55 for unpaid rent or utilities, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated April 21, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The landlord testified that one Hearing Package was served on each of the tenants by registered mail on April 22, 2022 to the rental unit address. The landlord stated that on April 8, 2022, the landlord communicated with the tenants via the building intercom system and that they were still residing in the rental unit as of that date. The landlord filed their application on April 12, 2022. The registered mail tracking numbers have been included on the style of cause for ease of reference and identified as "1" for tenant KM and "2" for tenant SB.

According to the Canada Post online registered mail tracking website, tenant KM signed for and accepted the Hearing Package on April 26, 2022. The Hearing Package for tenant SB was marked "unclaimed" and was returned to the sender. Section 90 of the Act states that documents served by registered mail are deemed served 5 days after they are mailed. Therefore, I find tenant SB was deemed served as of April 27, 2022. Given the above, I find this application to be unopposed by the tenants as I find the

tenant KM was served on April 26, 2022 when they signed for the Hearing Package and that tenant SB was deemed served as of April 27, 2022.

Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

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.

Given the above, the hearing continued without the tenants present and accordingly, I find this application to be undisputed by the tenants.

Preliminary and Procedural Matter

The landlord confirmed the email addresses of the parties. The landlord was advised that the decision and any applicable orders would be emailed to them. The decision will also be emailed to the tenants.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the landlord also entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on November 16, 2018 and converted to a month-to-month tenancy as of November 16, 2019. Monthly rent of \$2,095 was due on first day of each month. Although the landlord stated that a rent increase to \$2,147 was effective as of January 1, 2022, the maximum rent increase for 2022 is 1.5%, which I will address in my analysis below.

The landlord's monetary claim of \$815.55 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid portion of January 2022 rent	\$415.55
2. Two false alarm charges from fire department	\$300
3. Filing fee	\$100
TOTAL	\$815.55

Regarding item 1, the landlord testified that they are seeking loss of rent for January 1, 2022 to January 6, 2022 as they sold their home after that date and the tenant owes them rent for January 1-6, 2022, inclusive as no rental income could be provided in their statement of adjustment when they sold the home.

Regarding item 2, the landlord presented documentary evidence to support that due to false alarms by the tenant, the fire department charged back the landlord owner with two \$150 fees for a total of \$300 in false alarm fines. The landlord presented documentary evidence supporting the false alarm fines totally \$300.

The landlord is also seeking the \$100 filing fee.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

Firstly, regarding the rent increase from \$2,095 to \$2,147. Although the landlord stated that a rent increase to \$2,147 was effective as of January 1, 2022, the maximum rent increase for 2022 is 1.5%, which based on \$2,095 would be a maximum increase of \$31.42 to \$2,126.42. As \$2,147 exceeds \$2,126.42, I find that the rent increase is not enforceable, and that monthly rent remains at \$2,095 as a result as the landlord increased the rent contrary to the Act.

Regarding item 1, section 26 of the Act requires that rent be paid on the date that it is due, which I find was the first day of each month. I find the tenant failed to pay rent for January 1-6, 2022 to the landlord and therefore owes the following. I find the daily rental rate of \$2,095 divided by 31 days for January equals \$67.58 per day. I find that 6 days multiplied by \$67.58 equals \$405.48 and I grant the landlord that amount due to the breach of section 26 of the Act by the tenant. I dismiss any amount higher due to the rent increase which was not compliant with the Act as noted above, without leave to reapply.

Regarding item 2, I find the tenant is liable for \$300 in fire alarm fines for two false alarms called into the fire department by the tenant. Therefore, I grant the landlord **\$300** as claimed for this item.

As the claim has merit, I also award the landlord **\$100** for the filing fee pursuant to section 72 of the Act.

Given the above, I find the landlord has established a total monetary claim in the amount of **\$805.48**. This amount is comprised of \$405.48 for item 1, \$300 for item 2, plus the \$100 filing fee.

Conclusion

The landlord's application is mostly successful.

The landlord is granted a monetary order pursuant to section 67 of the Act, for the amount owing by the tenants to the landlord in the amount of \$805.48. The landlord must serve the tenants with the monetary order along with a demand for payment letter and then may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenants.

I caution the tenants that they can be held liable for all costs related to enforcement of the monetary order including court costs.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 11, 2023

Residential Tenancy Branch