



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, MNDCL-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;
- a Monetary Order for unpaid rent, pursuant to sections 26 and 67;
- a Monetary Order for damage or compensation, pursuant to section 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 tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:10 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the "agent") 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 agent and I were the only ones who had called into this teleconference.

The agent was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The agent testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, 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."

The agent confirmed the landlord's email address for service of this decision and order.

Preliminary Issue- Service

The agent testified that the tenant was served with the landlord's application for dispute resolution and evidence via registered mail on September 20, 2022. The agent testified that the tenant received the above package on October 4, 2022. The agent entered into evidence a Canada Post Tracking report which confirms the above testimony. I find that the tenant was served with the landlord's application for dispute resolution and evidence in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue- Tenancy Ended

The agent testified that the tenancy ended on October 31, 2022. As this tenancy has ended I find that I do not need to consider if the landlord's is entitled to an Order of Possession. The landlord's application for same is dismissed as the issue is now moot.

Preliminary Issue- Amendment

Section 64(3)(c) of the *Act* states that subject to the rules of procedure established under section 9 (3) [director's powers and duties], the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

Section 4.2 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states that 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.

The landlord's original application claimed unpaid rent, unpaid parking fees and NSF fees in the amount of \$1,414.86. Since filing for dispute resolution, the agent testified that the amount of outstanding rent, parking fees and NSF charges has increased to \$4,934.12.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, parking fees and NSF charges, not just the amount outstanding on the

date the landlord filed the application, should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules and section 64 of the *Act*, I amend the landlord's application to include a monetary claim for all outstanding rent, parking fees and NSF charges in the amount of \$4,931.12.

The landlord entered into evidence a ledger from December 14, 2020 to September 1, 2022. In the hearing I permitted the agent to upload an updated ledger after the hearing.

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 a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. 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 the agent, not all details of the agent's submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The agent provided the following undisputed testimony. This tenancy began on December 14, 2020 and ended on October 31, 2022. Monthly rent in the amount of \$1,654.45 and parking fees of \$80.18 were payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement states that the tenant paid a security deposit to the landlord in the amount of \$815.00. The agent testified that the landlord has not returned the deposit to the tenant.

The agent testified that the tenant had one rent cheque per month from June to October 2022 be returned NSF. The agent testified that the tenant made additional payments

each month that were not returned NSF, but they were not enough to cover rent, parking and the NSF charges.

The agent testified that the tenant owes the following amounts in rent, parking fees and NSF charges.

Charge	Amount
June rent and parking	\$1,234.60
June NSF charge	\$25.00
July rent and parking	\$104.63
July NSF charge	\$25.00
August rent and parking	\$0.63
August NSF charge	\$25.00
September rent and parking	\$1,734.63
October rent and parking	\$1,734.63
Total	\$4,934.12

The original ledger entered into evidence and the updated ledger confirm the above testimony of the agent.

The landlord entered into evidence a tenancy agreement which states at section 7(c)(ii):

- ii. If the Rent or any other sum owing to the Landlord is not honoured at the financial institution upon which it is drawn, the Tenant will pay to the Landlord, in respect of the dishonoured payment, the dishonoured payment charges charged to the Landlord, plus the \$25.00 fee for late rent, in addition to the sum owing

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 this *Act*. Pursuant to section 26(1) of the *Act*.

Based on the undisputed testimony of the agent and the ledgers entered into evidence, I find that rent in the amount of \$1,654.45 and parking fees in the amount of \$80.18 were due on the first day of each month. I find that the tenant failed to pay rent in accordance with section 26(1) of the *Act* and failed to pay parking fees. Based on the

ledgers entered into evidence and the agent's undisputed testimony, I find that the tenant owes the landlord \$4,809.12 in unpaid rent and parking fees, pursuant to section 67 of the *Act*.

Section 7(1)(d) of the *Residential Tenancy Regulation* (the "*Regulation*") states that a landlord may charge 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. Section 7(2) of the *Regulation* states that a landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I find that the landlord was authorized under section 7(c)(ii) of the tenancy agreement to charge the tenant a \$25.00 charge for NSF cheques. Based on the ledgers entered into evidence, I find that one cheque per month from June to October 2022 were returned to the landlord due to insufficient funds. Pursuant to my above findings, I find that the tenant owes the landlord \$125.00 in NSF fees for NSF cheques from June to October 2022.

As the landlord was successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Section 72(2) states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$815.00 in part satisfaction of their monetary claim.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Unpaid rent and parking	\$4,809.12
NSF charges	\$125.00
Filing Fee	\$100.00
Less security deposit	-\$815.00
TOTAL	\$4,219.12

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. 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 19, 2023

Residential Tenancy Branch