



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlord: OPU OPR MNRL-S MNDCL-S FFL
For the tenant: CNR

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act). The landlords applied for an order of possession for unpaid rent or utilities, for an order of possession based on 2 Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) for a monetary order for unpaid rent or utilities, for monetary compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenant applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice). The filing fee was waived for the tenant.

The landlords attended the teleconference hearing and the landlord were affirmed. The tenant did not attend the hearing. The tenant was provided the Notice of a Dispute Resolution Hearing document dated October 18, 2022 (Notice of Hearing) after filing his application. After a ten-minute waiting period, the tenant's application was **dismissed in full, without leave to reapply**, as the tenant failed to attend the hearing to present the merits of their application.

The landlords stated that they served the tenant with the Notice of Hearing dated November 22, 2022 (Notice of Hearing), application, and documentary evidence on the tenant in person on November 22, 2022 and via registered mail on December 8, 2022. The registered mail tracking number was provided as RN 579 558 826 CA. According to the Canada Post registered mail online tracking website, the Hearing Package was signed for and accepted by the tenant on December 19, 2022. Given the undisputed

evidence before me, I find the tenant was served with the Hearing Package on December 19, 2022, the date the tenant signed for and accepted the registered mail. Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states the following:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, I find this matter to be unopposed by the tenant and the hearing continued without the tenant present. I have reviewed all oral and written evidence before me that met the requirements of the RTB Rules. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary and Procedural Matters

At the outset of the hearing, the landlords confirmed that the tenant vacated the rental around Christmas, December 25, 2022 and that the tenant failed to return the rental unit keys. The landlords clarified that they are no longer seeking an order of possession as they were able to obtain one prior to the hearing through an Early end of Tenancy (ET) application pursuant to section 56 of the Act. Given the above, I will not consider an order of possession as the landlords have already obtained possession back of the rental unit prior to this hearing.

As the tenancy was in effect at the time the landlords' filed their application, I grant the landlords leave to reapply for damages and loss of rent as those would have been premature at the time this application was filed. The landlords requested at the hearing to consider unpaid rent for December 2022 in the amount of \$1,650 as the tenant did not vacate until December 25, 2022. Pursuant to section 64(3)(c) of the Act, I amend the landlords' application from \$8,518.90 to add \$1,650 for unpaid rent for December 2022 for a total of \$10,168.90, which I will describe by item below.

Issues to be Decided

- Are the landlords entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenant's security deposit and pet damage deposit under the Act?
- Should the filing fee also be granted?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. Monthly rent in the amount of \$1,650 was due on the first day of each month. The tenant paid a security deposit of \$800 and a pet damage deposit of \$400 at the start of the tenancy, which the landlords continue to hold, and of which I will determine interest later in this decision. The landlords' amended monetary claim of \$10,168.90 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Bylaw offence notice	\$150
2. Unpaid rent up to time of application	\$6,200
3. Unpaid Fortis gas bills	\$2,068.90
4. Unpaid rent for December 2022	\$1,650
5. Filing fee	\$100
TOTAL	\$10,168.90

Regarding item 1, the landlord has claimed \$150 for a bylaw offence notice (Bylaw Ticket) that the landlords testified that the tenant is responsible for dated 2022/09/12. The Bylaw Ticket cited a projection of a vehicle, the tenant's according to the landlords, on a street or sidewalk and indicated a receipt paid by the landlord of \$150.

Regarding item 2, the landlords stated that the tenant up until the application date owed rent arrears of \$6,200 and in support of this claim submitted their bank records showing what payments were attributed to what month.

Regarding item 3, the landlords have claimed \$2,068.90 for unpaid Fortis gas bills and the invoices were submitted in support of the amount claimed. The tenancy agreement submitted indicates that utilities were not included in the monthly rent.

Regarding item 4, and as discussed above, the landlords are also seeking \$1,650 in unpaid rent for December 2022 as the tenant did not vacate until December 25, 2022.

The filing fee will be addressed later in this decision.

Analysis

Based on the undisputed documentary evidence before me and the landlords' undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Item 1 – I accept that the landlord paid the Bylaw Ticket on behalf of the tenant of \$150, which I find is supported by the Bylaw Ticket submitted and the receipt for \$150. Accordingly, I find the tenant is liable for the Bylaw Ticket as it was their vehicle involved according to the landlords. Therefore, I find the landlords have met the burden of proof and I award the landlords **\$150** as claimed for this item.

Item 2 – I accept the testimony and banking records of the landlords in support that the tenant owes \$6,200 in rent arrears, not including December 2022 which will be address below. Section 26 of the Act requires that a tenant pay rent on the day that it is due in accordance with the tenancy agreement. I find that the tenant breached section 26 of the Act by failing to pay the full amount of rent on the day that it is due as claimed by the landlords. Therefore, I find the landlords have met the burden of proof and is entitled to monetary compensation of **\$6,200** in unpaid rent as claimed.

Item 3 - The landlords have claimed \$2,068.90 for unpaid Fortis gas bills and the invoices were submitted in support of the amount claimed. In addition, I find the tenancy agreement indicates that the tenant is responsible for utility costs. Consequently, I grant the landlords **\$2,068.90** as claimed for unpaid Fortis gas bills.

Item 4 - The landlords are also seeking \$1,650 in unpaid rent for December 2022 as the tenant did not vacate until December 25, 2022. Consistent with my finding regarding item 2 above, I find the tenant breached section 26 of the Act, and I award the landlords **\$1,650** for unpaid December 2022 rent.

As the landlords' claim had merit, I grant the landlords the recovery of their filing fee in the amount of **\$100** pursuant to section 72 of the Act.

I find that the landlords have established a total monetary claim of **\$10,168.90** as indicated above. I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the tenant's security deposit of \$800 and pet damage deposit of \$400, which the landlords continue to hold in the total amount of \$1,200 (combined deposits), which I find have accrued **\$2.88** in interest to date. Therefore, I find the landlords continue to hold a total of combined deposits of \$1,202.88, which includes interest.

I AUTHORIZE the landlords to retain the tenant's full combined deposits of \$1,202.88, which includes interest, in partial satisfaction of the landlords' monetary claim, and I grant the landlords a monetary order pursuant to section 67 of the Act for the balance owing to the landlords by the tenant in the amount of **\$8,966.02**.

Conclusion

The tenant's application has been dismissed in full, without leave to reapply.

The landlords' application is fully successful.

The landlords have established a total monetary claim of \$10,168.90. The landlords have been authorized to retain the tenant's full combined deposits of \$1,202.88, including interest, in partial satisfaction of the landlords' monetary claim. The landlords have been granted a monetary order pursuant to section 67 of the Act for the balance owing to the landlords by the tenant in the amount of \$8,966.02. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The tenant is reminded that they can be held liable for all costs related to the enforcement of the monetary order, including court fees.

This decision will be emailed to both parties at the email addresses confirmed by the landlords during the hearing.

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: February 14, 2023

Residential Tenancy Branch