



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPU, MNRL, MNDL, FFL

Introduction

This hearing was convened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a 10 day notice to end tenancy for unpaid rent or utilities dated February 7, 2023 (the "10 Day Notice") pursuant to section 55;
- a Monetary Order of \$3,191.42 for unpaid rent or utilities pursuant to section 55;
- a Monetary Order of \$1,000.00 as compensation for damage caused by the Tenants, their pets or their guests pursuant to section 67; and
- authorization to recover the filing fee for this application from the Tenants pursuant to section 72.

The Landlord's agent SM attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenants did not attend this hearing. I left the teleconference hearing connection open until 11:20 am in order to enable the Tenants to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that SM and I were the only ones who had called into the hearing.

I informed SM that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

Preliminary Matter – Service of Dispute Resolution Documents

SM testified that the Landlord's notice of dispute resolution proceeding package (the "NDRP Package") and documentary evidence were sent to the Tenants via registered mail. The Landlord submitted a registered mail receipt (tracking number referenced on the cover page of this decision). I find the Tenants were served with the Landlord's NDRP Package and documentary evidence in accordance with section 88 and 89 of the Act. I find that pursuant to section 90(a) of the Act, the Tenants are deemed to have received the NDRP Package and evidence on February 28, 2023, or five days after the registered mail package was sent on February 23, 2023.

Having found the Tenants to be deemed served with notice of this hearing, I directed this

Preliminary Matter – Severing of Unrelated Claim

Rules 2.3 and 6.2 of the Rules of Procedure state as follows:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

SM confirmed that the Landlord is still in the process of repairing damage and cleaning up garbage left behind by the Tenants. I find that in any event, the Landlord's claim for damage to the rental unit is not related to the Landlord's claim for an Order of Possession and unpaid rent or utilities. As such, the Landlord's claim for damage to the

rental unit is severed under the Rules of Procedure and dismissed with leave to re-apply.

Preliminary Matter – Tenancy Has Ended

According to SM, the Tenants vacated the rental unit in or around mid-February 2023, without notice and without providing a forwarding address to the Landlord. As the Tenants have already moved out, I find the Landlord's claim for an Order of Possession is no longer applicable.

Issues to be Decided

1. Is the Landlord entitled to \$3,191.42 for unpaid rent or utilities?
2. Is the Landlord entitled to reimbursement of the filing fee?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced April 1, 2021 and was month-to-month. Rent was \$2,500.00 due on the first day of each month. The Tenants paid a security deposit of \$1,250.00. According to SM, this tenancy began with one of the Tenants, and the second of the two Tenants was added later on.

A copy of the 10 Day Notice is submitted into evidence. The effective date of this notice was February 17, 2023. It states that the Tenants failed to pay rent of \$2,500.00 due on February 1, 2023 and \$691.42 in utilities following written demand on November 26, 2022. SM confirmed that the unpaid utilities were for an unpaid water bill. The Landlord submitted a copy of the water bill dated October 28, 2022 into evidence. SM confirmed it was agreed for the Tenants to pay the water bill to the Landlord and that the Tenants previously paid the water bills. SM referred to the tenancy agreement addendum which references payment of the water bill to the Landlord. The Landlord also submitted text message correspondence to show that a copy of the water bill was sent to the Tenants on November 8, 2022.

SM confirmed that a copy of the 10 Day Notice was taped to the Tenants' door on February 7, 2023.

Analysis

1. Is the Landlord entitled to \$3,191.42 for unpaid rent or utilities?

Section 26(1) of the Act states that a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(6) of the Act further states that if a tenancy agreement requires the tenant to pay utility charges to the landlord, and the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give a 10 day notice to end tenancy for non-payment. I accept the Landlord's undisputed evidence that the Tenants were required to pay the water bill to the Landlord as part of their tenancy agreement, and that the Tenants did not pay despite the Landlord's written requests more than 30 days prior to the issuance of the 10 Day Notice.

Section 46(2) of the Act requires that the notice to end tenancy given by a landlord comply with section 52 of the Act in order to be effective. Section 52 states:

Form and content of notice to end tenancy

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

I have reviewed a copy of the 10 Day Notice and that it complies with the requirements of section 52 in form and content.

I find the Tenants were served with the 10 Day Notice attached to the Tenants' door on February 7, 2023, in accordance with section 88(g) of the Act. Pursuant to section 90(c) of the Act, I find the Tenants are deemed to have received the 10 Day Notice on the third day after attaching, or February 10, 2023.

Section 46(4) of the Act permits a tenant to dispute a 10 day notice to end tenancy for unpaid rent, or pay the outstanding rent in full, within 5 days after receiving such notice. I find the Tenants did not apply to dispute the 10 Day Notice or pay the outstanding rent (including utilities) in full by February 15, 2023.

Section 46(5) of the Act states that if a tenant who has received a notice under section 46 does not pay the rent or make an application for dispute resolution in accordance with section 46(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Furthermore, sections 55(2)(b) and 55(4) of the Act state as follows:

Order of possession for the landlord

55 [...]

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the 10 Day Notice was deemed served on February 10, 2023, the time for disputing the 10 Day Notice expired on February 15, 2023, and the Tenants

did not pay the unpaid amounts to the Landlord or make an application for dispute resolution. Accordingly, I find the Tenants are conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, or February 20, 2023.

Pursuant to section 55(4)(b) of the Act, I order the Tenants to pay to the Landlord \$3,191.42 for unpaid rent (including unpaid utilities) as stated in the 10 Day Notice.

2. Is the Landlord entitled to reimbursement of the filing fee?

The Landlord has been successful in this application. I grant the Landlord's claim for reimbursement of her filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenants' \$1,250.00 security deposit in partial satisfaction of the total amount awarded in this decision.

The Monetary Order granted to the Landlord for the balance is calculated as follows:

Item	Amount
Unpaid Rent (February 2023)	\$2,500.00
Unpaid Utilities (October 28, 2022 Water Bill)	\$691.42
Filing Fee	\$100.00
Subtotal	\$3,291.42
Less Security Deposit	- \$1,250.00
Total Monetary Order for Landlord	\$2,041.42

Conclusion

The Landlord's claims for unpaid rent (including unpaid utilities) and reimbursement of the filing fee are granted. The Landlord's claim for an Order of Possession is dismissed without leave to re-apply as it is no longer applicable. The Landlord's claim for damage to the rental unit is dismissed with leave to re-apply. Leave to re-apply does not extend any applicable time limits.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenant's **\$1,250.00** security deposit in partial satisfaction of the total amount awarded.

Pursuant to sections 55 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of **\$2,041.42** for the balance awarded. This Order may be served on the Tenants, 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: March 20, 2023

Residential Tenancy Branch