



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, 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; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Tenant BGD (the "tenant") and an agent for the landlord (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

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

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

The agent testified that the tenants were each served with the landlord's application for dispute resolution and evidence via registered mail on December 6, 2023. Registered mail receipts for same were entered into evidence. The tenant confirmed receipt of the

above documents. I find that the landlord's application for dispute resolution and evidence were served in accordance with sections 88 and 89 of the *Act*.

The tenants did not submit any documentary evidence for consideration.

Preliminary Issue- Moot claim

Both parties agree that this tenancy ended on March 31, 2023. I find that the landlord's application for an Order of Possession is moot since this tenancy has already ended. The landlord's application for an Order of Possession is therefore dismissed without leave to reapply.

Preliminary Issue- Amendment

The landlord's application for dispute resolution seeks \$2,675.05 in unpaid rent. The landlord testified that the amount of rent outstanding has increased since this application for dispute resolution was filed.

The landlord is seeking unpaid rent up to and including the entire month of April 2023 totalling \$13,600.05. The landlord testified that as of the end of March 2023 the tenant owed \$10,875.00 in unpaid rent.

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.

I find that in this case the fact that the landlord is seeking compensation for all outstanding rent, not just the amount outstanding on the date the landlord filed the application, should have been reasonably anticipated by the tenants. 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 up to the end of March 2023.

I decline to amend the landlord's application for dispute resolution to include a claim for April 2023's rent because I find that such a claim is premature. I find that as of April 4, 2023, it is not yet known the total loss, if any, the landlord may suffer for April 2023. I make no findings on the tenant's liability to pay for the month of April 2023. The landlord has leave to apply for April's 2023's rent when any alleged loss has crystalized and is known.

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 recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Evidence and Analysis

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on August 15, 2022 and ended on March 31, 2023,
- monthly rent in the amount of \$2,725.00 was payable on the first day of each month, and
- a security deposit of \$1,362.50 was paid by the tenants to the landlord.

A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed that the tenants owe the landlord \$10,875.00 in unpaid rent accrued between the start of this tenancy and March 31, 2023. A ledger stating same was entered into evidence. I note that in the ledger on November 25, 2022 a charge of \$100.00 for the filing fee for this application for dispute resolution was added making the total owing as of March 31, 2023 stated as \$10,975.00. Only \$10,875.00 of this charge is for unpaid rent.

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*, I find that the tenants were obligated to pay the monthly rent in the amount of \$2,725.00 on the first day of each month. Based on the testimony of both parties and the ledger entered into evidence I find that the tenants did not pay rent in accordance with section 26(1) of the *Act* and owe the landlords \$10,875.00 in unpaid rent accrued between the start of this tenancy and March 31, 2023.

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

Section 72(2) of the *Act* 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 tenants' entire security deposit in the amount of \$1,362.50 in part satisfaction of the landlord's monetary claim for unpaid rent against the tenants.

Conclusion

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

Item	Amount
Unpaid rent	\$10,875.00
Filing Fee	\$100.00
Less security deposit	-\$1,362.50
TOTAL	-\$9,612.50

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: April 04, 2023

Residential Tenancy Branch