



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding HARRON INVESTMENTS INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenant: CNR, MNDCT, LAT, FFT
Landlord: OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened as a result of the parties' applications under the *Residential Tenancy Act* (the "Act").

The Tenant applied for:

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated January 2, 2023 (the "10 Day Notice") pursuant to section 46 of the Act;
- compensation of \$0.01 for the Tenant's monetary loss or money owed by the Landlord pursuant to section 67 of the Act;
- authorization to change the locks to the rental unit pursuant to section 70(2) of the Act; and
- authorization to recover the filing fee for the Tenant's application from the Landlord pursuant to section 72 of the Act.

The Landlord applied for:

- an Order of Possession under the 10 Day Notice pursuant to section 55 of the Act;
- compensation of \$1,500.00 for unpaid rent pursuant to sections 55 and 67 of the Act; and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72.

The Landlord's agents AG and JG attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 9:44 am in order to enable the Tenant to call into the hearing scheduled to start at 9:30 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 the Landlord's agents and I were the only ones who had called into the hearing.

All attendees at the hearing were advised 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

AG confirmed that the Landlord's notice of dispute resolution proceeding package and documentary evidence (collectively, the "Landlord's NDRP Package") was sent to the Tenant via registered mail on January 31, 2023. The Landlord submitted a registered mail tracking number in support (referenced on the cover page of this decision).

Tracking records indicate that the package was delivered on February 2, 2023. Based on the foregoing, I find the Tenant was served with the Landlord's NDRP Package on February 2, 2023, in accordance with sections 88 and 89 of the Act.

Preliminary Matter – Tenancy Has Ended

AG testified that the Tenant vacated the rental unit on March 2, 2023. I find this tenancy ended on that date. Since the Landlord has reclaimed possession of the rental unit, I find it would not be necessary for me to consider the Tenant's claim to dispute the 10 Day Notice or the Landlord's claim for an Order of Possession under the 10 Day Notice.

Preliminary Matter – Amendment of Landlord's Application

AG confirmed that the amount of unpaid rent owing by the Tenant has increased since the Landlord made its application. AG testified that the Tenant did not pay rent for the month of February 2023.

Rule 4.2 of the Rules of Procedure states:

4.2 Amending an application at the hearing

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.

(emphasis underlined)

I find it can be reasonably anticipated in the circumstances for the Landlord to claim the additional rent that has become owing after the Landlord's application was made. As such, I amended the Landlord's claim for unpaid rent from \$1,500.00 to \$3,000.00 pursuant to Rule 4.2 of the Rules of Procedure.

Preliminary Matter – Tenant's Non-attendance

Rules 7.3 and 7.4 of the Residential Tenancy Branch Rules of Procedure state:

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.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

The Tenant did not attend this hearing to present evidence regarding the merits of her application. Accordingly, in the absence of any evidence or submissions from the Tenant, I dismiss the Tenant's application in its entirety without leave to re-apply.

Having found the Tenant to be duly served with the Landlord's application, I directed this hearing to proceed in the absence of the Tenant.

Issues to be Decided

1. Is the Landlord entitled to compensation for unpaid rent?
2. Is the Landlord entitled to reimbursement of its filing fee?

Background and Evidence

This tenancy commenced on February 1, 2022 and was month-to-month. Rent was \$1,500.00 due on the first day of each month. The Tenant paid a security deposit and pet damage deposit each of \$750.00, which are held by the Landlord. A copy of the tenancy agreement has been submitted into evidence.

A copy of the 10 Day Notice is also submitted into evidence. It states the Tenant failed to pay rent of \$1,500.00 due on January 1, 2023. The effective date of the 10 Day Notice was January 15, 2023. AG confirmed that a copy of the 10 Day Notice was attached to the Tenant's door on January 2, 2023. The Landlord submitted a signed and witnessed proof of service form.

AG testified that on January 3, 2023, the Landlord received a partial payment of \$300.00 from the Tenant. AG confirmed that the total amount of unpaid rent owing by the Tenant for January and February 2023 is \$2,700.00.

Records of the Residential Tenancy Branch indicate that the Tenant submitted her application to dispute the 10 Day Notice on January 5, 2023.

AG confirmed that the parties have another upcoming dispute resolution proceeding regarding the Landlord's claims for monetary compensation (see file number on cover page of this decision).

Analysis

1. Is the Landlord entitled to compensation 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, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, I find rent was \$1,500.00 due on the first day of each month. I accept the Landlord's undisputed evidence that the Tenant only paid \$300.00 for January 2023 rent and did not pay any rent for February 2023. I find there is no evidence to suggest that the Tenant had a legal right under the Act to withhold payment of rent to the Landlord.

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Pursuant to section 67 of the Act, I order the Tenant to pay the Landlord \$2,700.00 for unpaid January and February 2023 rent.

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

The Landlord has been successful in its application. I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the Tenant's \$750.00 security deposit and \$750.00 pet damage deposit in partial satisfaction of the total amount awarded to the Landlord in this decision.

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

Item	Amount
Unpaid Rent for January and February (\$1,200.00 + \$1,500.00)	\$2,700.00
Filing Fee	\$100.00
Subtotal	\$2,800.00
Less Security Deposit and Pet Damage Deposit (\$750.00 × 2)	- \$1,500.00
Total Monetary Order for Landlord	\$1,300.00

Conclusion

The Tenant's application is dismissed in its entirety without leave to re-apply.

The Landlord is entitled to compensation of \$2,800.00 from the Tenant for unpaid rent and reimbursement of the Landlord's filing fee.

Pursuant to section 72(2)(b) of the Act, I authorize the Landlord to retain the Tenant's **\$750.00** security deposit and **\$750.00** pet damage deposit in partial satisfaction of the total awarded to the Landlord.

Pursuant to sections 67 and 72 of the Act, I grant the Landlord a Monetary Order in the amount of **\$1,300.00** for the balance. This Order may be served on the Tenant, 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: May 04, 2023

Residential Tenancy Branch