



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding KERR PROPERTIES 002 LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL, CNR, MNRT, MNDCT, RP, LRE, FFT

Introduction

This hearing was scheduled to deal with cross applications. The tenants filed to dispute a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice"); for monetary compensation for emergency repairs and other damages or losses; and for other remedies. The landlord applied for an Order of Possession and Monetary Order for unpaid rent.

The landlord's agent appeared for the hearing; however, there was no appearance on part of the tenants.

At the outset of the hearing, the landlord's agent informed me that the tenants vacated the rental unit in mid-March 2023 and the landlord no longer requires an Order of Possession.

The landlord's agent confirmed the tenants provided their Application for Dispute Resolution to the landlord but the landlord's agent took issue with service in that it was served by email and the landlord has not consented to being served by email and it was served late. Since the landlord took issue with service of the tenant's application I did not hear or make any findings with respect to the merits of the tenant's application and I **have dismissed the tenant's monetary claim with leave to reapply**. Since the tenancy has already ended, when the tenants vacated, the other remedies sought by the tenants are moot at this time.

The landlord's agent testified that she personally served the tenant referred to by initials JLM with the landlord's hearing documents on February 9, 2023 and the landlord's agent confirmed that the landlord seeks a Monetary Order. I was satisfied JLM was served and I continued to hear the landlord's claims against JLM. Having not heard that

the other tenant was served with the landlord's Application for Dispute Resolution, I do not issue any order against the other tenant.

The landlord's agent requested the landlord's monetary claim be amended to reflect the tenants remained in possession of the rental unit until mid-March 2023, without paying rent. Rule 4.6 of the Rules of Procedure provide:

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.

I find the request to amend the monetary claim to include unpaid and/or loss of rent after the landlord filed unit mid-March 2023 when the tenants vacated and without paying rent, is reasonably foreseeable and I amend the landlord's monetary claim accordingly.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent to mid-March 2023, as requested?
2. Award of the filing fee.

Background and Evidence

The tenancy started on September 13, 2022 and the landlord collected a security deposit of \$1625.00 and a pet damage deposit of \$1625.00. The tenants were required to pay rent of \$3250.00 on the first day of every month.

The tenants did not pay rent for January 2023 and on January 11, 2023 the landlord posted a 10 Day Notice on the door of the rental unit.

The landlord's agent testified that the tenants did not pay the outstanding rent for January 2023 after the 10 Day Notice was served and the tenants did not pay any rent for February 2023 or March 2023 and vacated the rental unit in mid-March 2023.

The landlord seeks a Monetary Order for unpaid rent for the 2.5 months that were not paid for January 2023 to mid-March 2023.

The landlord's agent stated the landlord did not want to apply the deposits toward the unpaid rent and will continue to hold the deposits in trust, to be administered in accordance with the Act.

Documentary evidence provided to me included a copy of the tenancy agreement; 10 Day Notice; a signed and witnessed Proof of Service document for service of the 10 Day Notice; and, a video showing the 10 Day Notice being served.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations, or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may withhold rent, such as: overpaying a security deposit and/or pet damage deposit, overpaying rent, authorization has been given by the landlord or an Arbitrator, or where the tenant has made emergency repairs to the property under section 33 of the Act.

In this case, I have been provided unopposed evidence that the monthly rent is \$3250.00 payable on the first day of every month and the tenants did not pay any rent for January 2023 or February 2023 and vacated the rental unit in mid-March 2023 without paying any rent for March 2023.

I was not provided any evidence to suggest the tenants had a legal right to withhold rent, with the possible exception of an emergency repair made by the tenants (a furnace repair) that is asserted on their Application for Dispute Resolution. However, the tenants did not appear at the hearing to present evidence in support of properly serving the landlord with their claim or in support of their entitlement to recover the cost of an emergency repair. Accordingly, I make no finding that the tenants did or did not pay for an emergency and I do not deduct it from unpaid rent. As stated in the Introduction section of this decision, the tenants are at liberty to file another Application for Dispute Resolution if they seek compensation from the landlord.

In light of the above, I grant the landlord's request to recover unpaid rent for the 2.5 months from January 2023 to mid-March 2023, in the sum of \$8125.00. I further award the landlord recovery of the \$100.00 filing fee the landlord paid for this application.

Provided to the landlord with this decision is a Monetary Order in the sum of \$8225.00 to enforce against JLM.

Conclusion

The landlord is provided a Monetary Order in the sum of \$8225.00.

The landlord continues to hold the security deposit and pet damage deposit in trust, to be administered in accordance with the Act.

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 12, 2023

Residential Tenancy Branch