



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

Parties	File No.	Codes:
(Tenant) P.K.	910099633	CNR, MNRT, RP
(Landlord) [SMS Ltd] Agent: W.N.	910100770	OPU-DR, MNU-DR, FFL

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Residential Tenancy Act* ("Act") by the Parties.

The Tenants applied:

- to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated January 30, 2023 ("10 Day Notice");
- for a monetary order for the cost of emergency repairs; and
- for an Order for repairs to the unit or property, having contacted the Landlord in writing to make repairs, but they have not been completed.

The Landlord applied for:

- an order of possession for unpaid rent and utilities, pursuant to having served the Tenants with the 10 Day Notice;
- a monetary order for unpaid rent and utilities; and
- recovery of their \$100.00 application filing fee;

The Tenant, P.K., and an agent for the Landlord, W.N. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about it.

Early in the hearing, I advised the Parties that Residential Tenancy Branch (“RTB”) Rules of Procedure (“Rules”) 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenants indicated different matters of dispute on their application, the most urgent of which was the application to set aside the 10 Day Notice. I told them that I find not all the claims on the Application are sufficiently related to be determined during this one-hour proceeding. I said I would, therefore, only consider the Tenants’ request to set aside the 10 Day Notice today, along with the Landlord’s claims. Therefore, the Tenants’ other claims are dismissed, with leave to re-apply.

During the hearing, the Tenant and the Agent were given the opportunity to provide their evidence orally and respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Rules; however, only the evidence relevant to the issues and findings in this matter are described in this decision.

Section 59 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that the Landlord served the Tenants with their Notice of Hearing documents and evidence by Canada Post registered mail, sent on February 28, 2023. The Landlord provided Canada Post tracking numbers as evidence of service. The Tenant acknowledged having received the Landlord’s registered mail package, although, she did not know if her husband had received his or not. Based on the evidence before me, I find that the Tenants were served with the Notice of Hearing documents and Landlord’s evidence in accordance with the Act.

The Tenant said that they served the Landlord with their Notice of Hearing documents and evidence via email. However, the Agent said that the Landlord had not received these documents from the Tenants. I have already severed most of the Tenants’ claims with leave to reapply, and the Parties agreed on the remaining issues before me through the course of the hearing. As such, I find it appropriate to dismiss the Tenants’ application to cancel the 10 Day Notice without leave to reapply, given insufficient proof of service of this claim.

Preliminary and Procedural Matters

The Parties provided their email addresses in their respective applications and they

confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, the Agent said that the Landlord already had an order of possession for the rental unit from a previous proceeding, which they have chosen not to enforce. She said the Landlord seeks a monetary order for unpaid rent and recovery of the \$100.00 application filing fee at this proceeding.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed term tenancy began on November 24, 2021, and ran to November 30, 2022, and then operated on a month-to-month basis. They agreed the Tenants owe the Landlord a monthly rent of \$1,938.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$950.00, and no pet damage deposit. The Agent said the Landlord still holds the security deposit in full.

During the hearing, the Agent outlined the amounts the Tenants owed and have paid from February 2023 to the present. She said that as of May 26, 2023, the Tenants owe the Landlord \$1,178.84 in unpaid rent.

However, the Tenant agreed with the Agent's calculations, but said that her records show that the Landlord has not credited the Tenants for a \$1,500.00 payment the Tenants sent the Landlord via etransfer on May 23, 2023. The Tenant advised us of the email address to where the etransfer was sent, but the Agent had no way of confirming this. However, in the hearing, the Tenant forwarded the Agent a copy of the etransfer receipt to the Agent's email address. They agreed that if and when this payment goes through that there will be a credit of \$321.16 in the Tenant's account with the Landlord.

The Tenant also said that the reason for their difficulty this year paying their full rent on

the first of each month, is because the Tenant's husband, R.M., had a heart attack in the fall of 2022. She said they have a business in town – even doing business with the Landlord's company – but her husband's health condition affected the work they could do. The Tenant said:

Things are turning around for us, as he's able to work and do more of the work, so the revenue has come up again. What we intend is to be paying the next month's rent continuously through the month, prepaying the next month's rent. With him having this heart attack it was extremely difficult for our business and for us.

The Agent said that the Landlord does not want to evict these Tenants, and if the May 23 payment goes through, the Tenants will be out of debt to the Landlord. The news of the Tenants' business improvement was also positive for the ongoing relationship.

With the agreement of the Parties, I proposed giving the Landlord a conditional monetary order for the amount owing, including recovery of the Landlord's \$100.00 application filing fee. This monetary order can be enforced, only if the Tenants' May 23, 2023, payment of \$1,500.00 does not go through. If that payment goes through in full by June 1, 2023, the monetary order will become void and unenforceable. Both Parties agreed that this would be a reasonable solution.

Accordingly, I grant the Landlord a **Monetary Order** from the Tenants of **\$1,278.84**, including unpaid rent owing as of May 26, 2023, and recovery of the Landlord's application filing fee for this proceeding, pursuant to sections 67 and 72 of the Act. This Order will be void and unenforceable if the Tenants' May 23, 2023, etransfer payment of \$1,500.00 is received by the Landlord by June 1, 2023.

Conclusion

The Landlord is successful in their claim for unpaid rent of **\$1,178.84** and recovery of their **\$100.00** application filing fee from the Tenants. As the Tenants have etransferred more than this amount to the Landlord, but that transfer is still pending, the Landlord will be given a conditional monetary order for the amount owing.

The Tenants' application to cancel the 10 Day Notice is dismissed without leave to reapply. The Tenants' other claims are dismissed with leave to reapply.

I grant the Landlord a **Monetary Order of \$1,278.84**, which **Order is void and**

unenforceable, if the Tenant's May 23, 2023, etransfer of \$1,500.00 is received by the Landlord by June 1, 2023.

If the etransfer is not received in due course, this Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: May 26, 2023

Residential Tenancy Branch