



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes

For the landlord: OPU MNRL-S FFL
For the tenant: CNR

Introduction

This dispute relates to an Application for Dispute Resolution (application) by both parties seeking remedy under the *Residential Tenancy Act* (Act) for the following:

1. Landlord order of possession for unpaid rent or utilities,
2. \$2,900 monetary claim by landlord for unpaid rent,
3. Landlord request to retain security deposit towards any amount owed,
4. \$100 filing fee for landlord,
5. Cancel 10 Day Notice to End Tenancy for Unpaid Rent dated December 7, 2022 (10 Day Notice) by the tenant.

The landlord and their agent attended the teleconference hearing. The tenant did not attend the hearing. As the tenant did not attend the hearing to present the merits of their application, the tenant's application was **dismissed, without leave to reapply**, after the 10-minute waiting period had elapsed. The hearing continued with consideration of the landlord's application only pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) 7.1 and 7.3, which address the consequences for not attending a dispute resolution proceeding.

The hearing process was explained to the landlord and agent, and they were provided the opportunity to ask questions about the hearing process. Thereafter the landlord and agent gave affirmed testimony, was provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing and make submissions to me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

The agent testified that tenant with the Notice of Dispute Resolution Hearing dated December 21, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) on Saturday, December 24, 2022 at 10:00 a.m. by the landlord who taped the Hearing Package to the tenant's door. Section 90 of the Act stated that documents posted to the door are deemed served 3 days after they are posted. Therefore, I find the tenant was deemed served with the Hearing Package on December 27, 2022.

Preliminary Matters

The landlord confirmed the file number of a previous decision dated February 23, 2023 (Previous Decision). The file number has been included on the cover page of this decision for ease of reference. The Previous Decision resulted in the landlord being granted an order of possession. As a result, I find that the order of possession portion of the application before me is no longer necessary and therefore will not consider it further as the landlord already has possession back of the rental unit.

The landlord testified that in addition to the rent owed listed on the application, the tenant has subsequently not paid the rent for December 2022, January 2023, February 2023, March 2023 and April 2023. As a result, the landlord requested to amend the application to include rent owed up until April 2023. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 64(3)(c) of the Act, from \$2,900 to \$10,000, which will be described further below.

The agent confirmed the email addresses of both parties at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to the landlord and that the decision only would be emailed to the tenant.

Issues to be Decided

- Is the landlord entitled to a monetary order?
- What should happen to the tenant's security deposit?
- Is the landlord entitled to the filing fee?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 1, 2022, and converted to a month-to-month tenancy after June 30, 2023. Monthly rent in the amount of \$2,000 was due on the first day of each month. The tenant paid a security deposit of \$1,000 at the start of the tenancy. The interest on the security deposit will be calculated later in this decision.

The landlord's amended monetary claim of \$10,000 is as follows:

| ITEM DESCRIPTION | AMOUNT CLAIMED |
|---|-----------------|
| 1. Unpaid portion of rent until November 2022 | \$1,100 |
| 2. Unpaid portion of December 2022 rent | \$1,700 |
| 3. Unpaid portion of January 2023 rent | \$1,700 |
| 4. Unpaid portion of February 2023 rent | \$1,700 |
| 5. Unpaid portion of March 2023 rent | \$1,700 |
| 6. Unpaid portion of April 2023 rent | \$2,000 |
| 7. Filing fee | \$100 |
| TOTAL | \$10,000 |

The above noted \$1,700 rent amounts are \$300 less than the \$2,000 rent per month as the landlord confirmed the Ministry paid the landlord directly \$300 for those months mentioned above. Where \$2,000 is listed, the Ministry stopped paying the tenant as they were evicted.

The landlord is seeking to offset the claim with the tenant's \$1,000 security deposit.

Analysis

Based on the undisputed testimony of the landlord and agent and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

I find the tenant breached the Act which requires the tenant to pay rent when it is due. Therefore, I find the landlord has met the burden of proof and owes the landlord \$10,000 for unpaid rent.

The landlord continues to hold the tenant's security deposit of \$1,000, which I find has accrued \$7.37 in interest. Therefore, I find the landlord is holding a total security deposit including interest of \$1007.37.

As the landlord's claim had merit, I grant the landlord the recovery of the **\$100** filing fee.

Pursuant to section 72 of the Act, I authorize the landlord to retain the tenant's full security deposit of \$1,007.37, which includes interest, in partial satisfaction of the landlord's monetary claim. The landlord is granted a monetary order pursuant to section 67 of the Act in the balance owing by the tenant to the landlord in the amount of **\$8,992.63**.

Conclusion

The tenant's application is dismissed in full, without leave to reapply. The landlord's application is fully successful. The landlord has established a total monetary claim of \$10,000 and has been authorized to retain the tenant's full security deposit interest as described above. The remaining balance of \$8,992.63 is owing by the tenant to the landlord and a monetary order is granted to the landlord as a result in that amount.

Should the landlord require enforcement of the monetary order, the order must be first served on the tenant with a demand for payment letter and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The tenant may be held liable for the costs associated with enforcing the monetary order. This decision will be emailed to both parties. The monetary order will be emailed to the landlord only for service on the tenant.

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 18, 2023

Residential Tenancy Branch