



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR, FFT, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (Act).
The Tenant's application:

- To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice),
- Reimbursement of the filing fee.

And the Landlord's application for:

- An order of possession.
- A monetary order for \$9,608.77.
- Reimbursement of the filing fee.

Both parties confirm service of the Dispute Resolution Proceedings Package and related evidence.

Both parties testified the Tenants moved out on July 10, 2023. I therefore dismiss the Tenants' application to cancel the 10 Day Notice and the Landlords' application for an order of possession, as both claims are moot. As I have not considered the merits of the Tenants' application, I dismiss their request to recovery the filing fee, without leave to reapply.

Preliminary Issue – Amendment

At the hearing the Landlords sought to further amend their application to include a claim for increased rent which the Landlords testified remains outstanding.

Rule of Procedure 4.2 allows an application to be amended 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.

In this case, the Landlords are seeking compensation for unpaid rent that has increased since they first applied for dispute resolution, I find that the increase in the Landlords' monetary claim should have been reasonably anticipated by the Tenants. Therefore, I order that the Landlords' application be amended to include a claim for increased rent (\$9,608.77).

Issue(s) to be Decided

- Are the Landlords entitled to a Monetary Order for unpaid rent?
- Are the Landlords entitled to recover the filing fee?

Background and Evidence

Evidence was provided that the fixed-term tenancy started on April 7, 2022 and converted to a periodic tenancy with rent due on the first day of each month. Effective May 1, 2023 rent was \$6,630.00. Prior to this, rent was \$6,500.00 per month. The Landlords hold in trust a \$3,250.00 security deposit paid by the Tenants on in April 2022. Both parties confirm the Tenants vacated the rental unit on July 10, 2023.

The Landlord testified that the Tenants only made a partial rent payment of \$3,651.23 for June 2023. The Tenants failed to pay the outstanding amount of \$2,978.77 for June 2023. On June 2, 2023, the Landlords served the 10 Day Notice, with an effective date of June 12, 2023. The 10 Day Notice indicates unpaid rent in the amount of \$2,978.77 due on June 1, 2023.

The Tenants testified they have not paid rent in the amount of \$2,978.77 for June 2023 and they did not pay any rent for July 2023.

The Tenants stated they paid \$2,828.77 for emergency and general repairs and they have attempted, without success, to recover this amount from the Landlords for over a six-month period. The Tenants testified they deducted the amount owed to them from the rent owed for June 2023 because the Landlords failed to reimburse them.

The Tenants stated the hot water tank malfunctioned on December 9, 2023, and they were had no heat or hot water. The Tenants testified they did not contact the Landlords and instead directly called a plumber as the situation was urgent. The Tenants filed an invoice in the amount of \$2,090.10 which details this repair.

The Tenants testified there were concerns with low water pressure at the rental unit since May 2022, stating the Landlords had sent a plumber in June 2022, however, the issue continued and was not fully rectified. The Tenants proceeded with this repair and

provided an invoice with the total cost of \$348.87. The Tenants testified they did not contact the Landlords when they proceeded with these repairs in April 2023. In addition, the Tenants submitted a dryer repair bill in the amount of \$181.70 and an electrical bill for \$207.90.

The Landlord testified that for urgent situations, they have an emergency line and the number was provided to the Tenants as part of the tenancy agreement. Further, the Landlord testified there is always an individual to answer and follow up on calls. The Landlord stated they did not receive any calls regarding emergency repairs. The Landlord testified the Tenants indicated concerns with low water pressure on April 18, 2022 and May 20, 2022, at which time they sent a repairman for this issue.

Analysis

- Are the Landlords entitled to a Monetary Order for unpaid rent?

Section 26 of the Act states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

Based on the evidence before me, I find that the Landlords have established a claim for unpaid rent of \$9,608.77.00 owing for June and July 2023.

Emergency repairs are addressed in section 33 of the Act. A tenant cannot be reimbursed for emergency repairs unless the tenant has first demonstrated that repairs are:

- urgent,
- necessary for the health or safety of anyone or for the preservation or use of residential property, and
- made for the purpose of repairing
 - major leaks in pipes or the roof,
 - damaged or blocked water or sewer pipes or plumbing fixtures, or the primary heating system,
 - damaged or defective locks that give access to a rental unit, or
 - the electrical systems.

The Act also says the tenant must make at least two attempts to contact the landlord to make the repairs and give the landlord reasonable time to make the repairs. If the landlord does not make the repairs, the tenant can make the repairs and then claim reimbursement by giving the landlord a written account of the emergency repairs with a receipt for each amount claimed. If the landlord does not reimburse the tenant for the repairs, the tenant may deduct the cost of the repairs from rent.

Tenant NS's testimony supports the urgency to repair the hot water tank and the Tenants provided documentary evidence to prove related costs. However, I find the Tenants did not contact the Landlords for emergency repairs as per the Act.

Further, for the additional repairs completed by the Tenants, I find the Tenants did not substantiate the following:

- emergency repairs were required for the low water pressure, dryer and electrical work,
- they asked the Landlords for emergency repairs,
- the Landlords refused to make the repairs.

In the absence of this information the Tenants cannot be reimbursed for emergency repairs.

I find the Tenants did not have a lawful reason to withhold the rent. The Tenants have not applied for a monetary order to recover the cost of non-emergency repairs. As such, I make no finding whether the alleged repairs made were necessitated as a result of the Landlords' failure to make repairs required by section 32 of the Act.

I find the Tenants owe \$9,608.77 in unpaid rent. I grant the Landlords a monetary award in this amount.

- Are the Landlords entitled to recover the filing fee?

As the Landlords were successful with their application, the Landlords are entitled to recover their \$100.00 filing fee from the Tenants pursuant to Section 72 of the Act.

Conclusion

The Landlords are granted a monetary award of \$9,708.77 as set out below:

Total Unpaid Rent for June and July 2023	\$9,608.77
Filing Fee	\$100.00
Total Monetary Award	\$9,708.77

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: September 6, 2023

Residential Tenancy Branch