



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT RP CNR / OPRM-DR FFL

Introduction

This hearing dealt with two applications pursuant to the *Residential Tenancy Act* (the “**Act**”). The landlord’s for:

- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$3,520 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

And the tenants’ for:

- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- cancellation of the landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (the “**Notice**”) pursuant to section 46; and
- more time to make an application to cancel the Notice pursuant to section 66.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:12 am in order to enable the tenants to call into this teleconference hearing scheduled for 11:00 am. The landlord’s agent (“**HF**”) attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that HF and I were the only ones who had called into this teleconference.

HF testified he served that the tenants with the notice of dispute resolution form and supporting evidence package via registered mail on January 24, 2020. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenants are deemed served with this package on January 29, 2020, five days after HF mailed it, in accordance with sections 88, 89, and 90 of the Act.

HF testified that he served additional evidence relating on the tenants on March 26, 2020 (eight days before this hearing) to the email address specified on the tenant's application for dispute resolution (reproduced on the cover of this decision). He testified he did this because the tenants have abandoned the rental unit and did not provide him with their forwarding address.

Section 71 of the Act allows for an arbitrator to order that documents have been sufficiently served even if not served in accordance with section 88 or 89 of the Act. In this case, I find that service by email is sufficient, as the landlord did not have a forwarding address for the tenants and as the tenants listed their email address on their own application. Based on this, I am satisfied that the tenants would have received the documents set by email on March 26, 2020. Additionally, as landlord is a respondent in the tenant's application, he is permitted to serve evidence on the tenant up to seven days prior to the hearing (Rule of Procedure 3.15). As such, the documents emailed to the tenants were served within time.

Preliminary Issue – Effect of Tenants Vacating the Rental Unit

HF testified that the tenants have vacated the rental unit. As such, he stated that the landlord no longer requires an order of possession.

Accordingly, and with consent of HF, the Notice is cancelled and of no force and effect. I dismiss the landlord's application for an order of possession. As such, the tenants' application for more time and to cancel the Notice is no longer necessary.

Additionally, as the tenants no longer reside at the rental unit, they are not entitled to have any repairs made to the rental unit.

I dismiss the tenants' application in its entirety.

Preliminary Issue – Amendment to Increase Amount Claimed

At the hearing the landlord sought to further amend the application to include a claim for:

- 1) unpaid rent for all of February 2020 (\$3,500) and for March 1 to March 12, 2020 (\$1,354.84);
- 2) unpaid water utilities for November 1, 2019 to February 28, 2020 (\$876.03); and
- 3) repair costs to the rental unit (\$3,097.50).

Rule of Procedure 4.2 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.

The increase in the landlord's claim for unpaid rent should have been reasonably anticipated by the tenants. Likewise, as the tenancy agreement explicitly states that water utilities are not include in rent and are the tenant's responsibility, the tenant should have anticipated that the landlord would seek to recover this amount.

Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for unpaid rent for February 1 to March 12, 2020 and unpaid utilities for November 1, 2019 to February 28, 2020 (\$4,954.84).

I find that the landlord's claim to recover repair costs to the rental unit could not have reasonably been anticipated by the tenants in advance of the hearing. They represented an entirely different head of damages previously not included in the landlord's application. As such, I decline to allow the landlord to amend his application to include a claim for these damages. He must bring a separate application to recover this amount.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$9,250.87;
- 2) recover their filing fee for the tenants; and
- 3) retain the security and pet damage deposits in partial satisfaction of the monetary order made?

Background and Evidence

The parties entered into a written, fixed term tenancy agreement starting September 1, 2019 and ending August 31, 2020. Monthly rent is \$3,500, payable on the first of each month. The tenants were required to pay all utilities, except garbage collection. The tenants paid the landlord a security deposit of \$1,750 and a pet damage deposit of \$1,750 (collectively, the "**Deposits**"). The landlord still retains the Deposit.

HF testified that the tenants did not pay monthly rent for January or February 2020. He testified that the tenants were \$20 in arrears for December 2019.

As stated above, HF testified that the tenants vacated the rental unit on March 12, 2020 and had not paid rent for that month. HF testified that the landlord seeks compensation for unpaid for the portion of March 2020 that the tenants occupied the rental unit.

HF also testified that the tenants did not pay their water bill, as required by the tenancy agreement, for the period of November 1, 2019 to February 28, 2020. He submitted a copy of the water bill, issued to the landlord, showing that \$876.03 is owing for this utility for that period of time.

In total, the landlord claims \$9,250.87, representing the following:

December Arrears	\$20.00
January Arrears	\$3,500.00
February Arrears	\$3,500.00
Mar 1 to 12 Arrears	\$1,354.84
Water bill (Nov 1 to Feb 28)	\$876.03
Total	\$9,350.87

Analysis

1. Unpaid Rent

Section 26(1) of the Act states:

Rules about payment and non-payment of rent

26 (1) 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.

As the tenancy was for a fixed term ending August 31, 2020, the tenants are not permitted to end the tenancy prior to this date. As they disputed the Notice, the tenancy did not end on the effective date of the Notice (as it otherwise would have pursuant to section 46(a) of the Act).

Accordingly, the tenants were obligated to pay the full amount of rent owing for March on March 1, 2020.

Based on the uncontroverted testimony of HF, I find that the tenants did not pay any portion of monthly rent for January, February, or March 2020. Additionally, I accept that they were \$20 in arrears for December 2019.

I order that the tenants pay the landlord \$7,020, representing unpaid rent for the entirety of January and February 2020, and the arrears of December 2019.

As the landlord seeks only to recover unpaid rent for the portion of March 2020 that the tenants occupied the rental unit, I order that the tenants pay the landlord \$1,354.84.

2. Water Bill

Section 7(1) of the Act states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Based on the tenancy agreement submitted into evidence, I find that the tenants are obligated to pay for the rental unit's water bill. Based on the bill submitted into evidence I find that the cost of water for November 1, 2019 to February 28, 2020 was \$876.03. I accept HF's testimony that the tenants have not paid this amount.

This non-payment is a breach of the tenancy agreement. I find that, as a result of this breach, the landlord is required to pay the water bill. Accordingly, the tenants must compensate the landlord for this damage. I order that they pay the landlord \$876.03.

3. Filing Fee and Deposits

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover his filing fee (\$100) from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the Deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67, and 72 of the Act, I order that the tenants pay the landlord \$5,850.87, representing the following:

December 2019 Arrears	\$20.00
January 2020 Arrears	\$3,500.00
February 2020 Arrears	\$3,500.00
Mar 1 to 12, 2020 Arrears	\$1,354.84
Water bill (November 1, 2019 to February 28, 2020)	\$876.03
Filing Fee	\$100.00
Credit for Deposits	-\$3,500.00
Total	\$5,850.87

I order that the landlord serve the tenants with a copy of this decision and attached order to the tenants at the email address on the cover of this decision immediately upon receiving it from the Residential Tenancy Branch.

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: April 3, 2020

Residential Tenancy Branch