Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

FINAL DECISION

Dispute Codes OPR, OPC, MNRL-S, FFL; CNR-MT, RR, FFT; CNR, MNDCT, RR, LAT, FFT

Introduction

This hearing dealt with the landlords' application, filed on September 14, 2022, pursuant to the *Residential Tenancy Act* ("*Act*") for:

- an order of possession for unpaid rent and for cause, pursuant to section 55;
- a monetary order for unpaid rent of $12,860.25, pursuant to section 67;
- authorization to retain the tenants' security and pet damage deposits, totalling $1,750.00 (collectively "deposits"), pursuant to section 38; and
- authorization to recover the $100.00 filing fee paid for their application, pursuant to section 72.

This hearing dealt with the tenant's first application, filed on June 13, 2022, pursuant to the *Act* for:

- more time to make an application to cancel the landlords' Ten Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice"), pursuant to section 66;
- cancellation of the landlords' 10 Day Notice, pursuant to section 46;
- an order to allow the tenant to reduce rent of $450.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the $100.00 filing fee paid for her application, pursuant to section 72.

This hearing also dealt with the tenant's second application, filed on June 27, 2022, pursuant to the *Act* for:

- cancellation of the landlords' 10 Day Notice, pursuant to section 46;
- a monetary order of $100.00 for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;

- an order to allow the tenant to reduce rent of $500.00 for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to change the locks to the rental unit, pursuant to section 70; and
- authorization to recover the $100.00 filing fee paid for her application, pursuant to section 72.

"Landlord GL" did not attend both hearings. The tenant attended the first hearing only. Landlord YL ("landlord") attended both hearings. At both hearings, both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The first hearing on October 31, 2022, lasted approximately 26 minutes. The first hearing began at 11:00 a.m. with me and the landlord present. The tenant called in late at 11:01 a.m. I did not discuss any evidence with the landlord in the absence of the tenant. The first hearing ended at 11:26 a.m.

The second hearing on January 31, 2023, lasted approximately 38 minutes. The second hearing began at 11:00 a.m. and ended at 11:38 a.m. I monitored the teleconference line throughout the second hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the reconvened Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only people who called into the second hearing teleconference.

At the first hearing, the landlord and the tenant confirmed their names and spelling. At the first hearing, the landlord and the tenant both provided their email addresses for me to send copies of my interim decision and notices of reconvened hearing to both parties.

At the second hearing, the landlord confirmed her name and spelling. At the second hearing, the landlord provided her email address for me to send a copy of this decision to the landlords.

At both hearings, the landlord stated that her father, landlord GL, owns the rental unit. At both hearings, she said that she had permission to represent landlord GL at both hearings (collectively "landlords"). At both hearings, she provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recordings of any RTB hearings by any participants. At the outset of the first hearing, the landlord and the tenant separately affirmed, under oath, that they would not

record the first hearing. At the outset of the second hearing, the landlord affirmed, under oath, that she would not record the second hearing.

At the first hearing, I explained the hearing process to the landlord and the tenant. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. Neither party made any accommodation requests.

At the second hearing, I explained the hearing process to the landlord. She had an opportunity to ask questions. She did not make any adjournment or accommodation requests.

In my interim decision, I amended the tenants' two applications to correct the spelling of landlord GL's first name, pursuant to section 64(3)(c) of the *Act*. The landlord consented to same. I found no prejudice to either party in making that amendment.

Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on October 31, 2022, was adjourned because the tenant claimed that she was calling in the middle of her work shift as a registered nurse and her employer changed her schedule. By way of my interim decision, dated October 31, 2022, I adjourned the tenant's two applications to be heard together with the landlords' application already scheduled for 11:00 a.m. on January 31, 2023.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notices of reconvened hearing with the second hearing date information, from the RTB. At the second hearing, the landlord confirmed receipt of my interim decision and the notice of reconvened hearing from the RTB.

At the second hearing, I reviewed the following information at page 4 of my interim decision, with the landlord (bold emphasis in original):

> *The landlord's application is already scheduled on January 31, 2023 at 11:00 a.m. I notified the parties that the tenant's two applications would be reconvened as a conference call hearing to be heard together with the landlord's application, the file number of which appears on the front page of this decision, on* ***January 31, 2023 at 11:00 a.m.*** *The landlord confirmed that she had the phone number and access code to call into that hearing, as it was indicated on her notice of*

hearing, dated September 27, 2022, which she said she had in front of her during this hearing.

Copies of the Notice of Reconvened hearing with the calling instructions are also included with this decision.

I ordered the tenant to serve the landlords with the tenant's original application, notice of hearing, and evidence by November 4, 2022, by way of registered mail, to the landlord's service address indicated on the cover page of this decision. The tenant affirmed her understanding of and agreement to same.

During the second hearing, the landlord affirmed that the above information was correct, as per my interim decision.

Preliminary Issue – Dismissal of Tenant's Application

At the first hearing, the tenant stated that she served her two applications for dispute resolution hearing packages to the landlords, by email. The landlord said that she did not provide an email for service of documents, to the tenant. The landlord confirmed that she did not receive the tenant's two applications and she only knew about this hearing from reminder emails received directly from the RTB. She claimed that she filed her own application against the tenant, so she uploaded evidence regarding same.

The landlord stated that the landlords did not receive copies of the tenant's two applications after the first hearing. As noted above in my interim decision, I ordered the tenant to serve her applications to the landlords by November 4, 2022, by way of registered mail to the landlords' address, which was provided on the cover page of my interim decision.

My interim decision and the notice of reconvened hearing were sent to the tenant by email, directly by the RTB on November 1, 2022 at 2:56 p.m., as per the information contained in the online RTB dispute access site. In accordance with section 89 of the *Act* and sections 43 and 44 of the *Residential Tenancy Regulation* ("*Regulation*"), I find that the tenant was deemed served with the interim decision and the notice of reconvened hearing on November 4, 2022, three days after it was sent to the tenant's email address. The tenant provided her email address for service of the above documents at the first hearing, as noted above in this decision.
Rule 7.3 of the RTB *Rules* states the following:

> *7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any appearance or submissions from the applicant tenant at the second hearing, I order the tenant's two applications dismissed in their entirety, without leave to reapply.

Preliminary Issue – Service of Documents

At the outset of the second hearing, the landlord confirmed that the tenant vacated the rental unit on December 19, 2022. She stated that the landlords did not require an order of possession against the tenant because the landlords already took back possession of the rental unit. I informed her that this portion of the landlords' application was dismissed without leave to reapply and she confirmed her understanding of same.

At the second hearing, the landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package on September 29, 2022, by way of registered mail. The landlord provided a Canada Post tracking number verbally during this hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlords' application on October 4, 2022, five days after its registered mailing.

At the second hearing, the landlord testified that the tenant was served with the landlords' amendment and evidence package, including a monetary order worksheet and bank statements, on December 19, 2022, by way of posting to the rental unit door.

I note that posting is not permitted method of service for an amendment form for a monetary order, pursuant to section 89(1) of the *Act*. The landlord also said that the tenant vacated the rental unit on December 19, 2022. Therefore, the tenant would not have been present to receive the landlord's documents on December 19, 2022 or after that date. Therefore, I cannot consider the landlord's evidence served on the above date, in this decision.

Rule 4.2 of the RTB *Rules* states the following (bold emphasis in original):

> ***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 considered the landlords' increased monetary claim for unpaid rent in this decision, since I amended the landlord's application at this hearing, as noted below, and therefore, an amendment form was not required from the landlords, to serve to the tenant.

Preliminary Issue – Amendment of Landlords' Application

Pursuant to section 64(3)(c) of the *Act*, I amend the landlords' application to increase the landlords' monetary claim to include unpaid rent from October to December 2022. The landlord requested this amendment at the second hearing.

The landlords filed their application on September 14, 2022, prior to the October to December 2022 rent being due. I find that the tenant is aware that rent is due as per her tenancy agreement. The tenant continued to reside in the rental unit until December 19, 2022, despite the fact that a 10 Day Notice required her to vacate earlier, for failure to pay the full rent due.

Therefore, the tenant knew or should have known that by failing to pay her full rent, the landlords would pursue all unpaid rent at the second hearing. For the above reasons, I find that the tenant had appropriate notice of the landlords' claim for increased rent, despite the fact that she did not attend the second hearing.

Issues to be Decided

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for his application?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of the landlord at the second hearing, not all details of the respective submissions and

arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

At the second hearing, the landlord testified regarding the following facts. This tenancy began on March 26, 2021 and ended on December 19, 2022. Monthly rent in the amount of $1,776.25 was payable on the first day of each month. The rent was increased from the original amount of $1,750.00, as per the parties' written tenancy agreement, by $26.25, which is 1.5%, for a total of $1,776.25, effective April 26, 2022, pursuant to a Notice of Rent Increase, dated December 14, 2021 ("NRI"). The NRI was served by the landlords to the tenant by email on December 14, 2021. Monthly parking fees of $65.00 per month was payable to the landlord, in addition to the monthly rent. A security deposit of $875.00 and a pet damage deposit of $875.00 were paid by the tenant and the landlords continue to retain both deposits. A written tenancy agreement was signed by both parties.

At the second hearing, the landlord's agent stated the following facts. The landlord seeks a monetary order of $12,862.50 for unpaid rent, to retain the tenant's deposits totalling $1,750.00, and to recover the $100.00 application filing fee. The tenant failed to pay rent of $1,750.00 and parking of $65.00 for February 2022, and rent of $1,776.25 and parking of $65.00 for each month from July to December 2022, totalling $12,862.50.

Analysis

As per section 26 of the *Act*, the tenant is required to pay rent on date indicated in the parties' written tenancy agreement. The landlord testified at the second hearing, that rent is due on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlords for damage or loss that results from that failure to comply.

I find that the rent for this rental unit and tenancy was legally increased from $1,750.00 to $1,776.25, pursuant to an NRI, served by the landlords to the tenant. The NRI provided the tenant at least 3 months' notice of an increase from the original rent in the tenancy agreement, by the allowable RTB *Regulation* amount of 1.5% for the year 2022. I find that this rent was effective for the July to December 2022 rent sought by the landlords. While the landlords included parking charges on the NRI form, they put the parking amount next to the rent amount, and the parking charges remained the same at $65.00 per month, so they were not increased.

The landlord provided undisputed, affirmed testimony at the second hearing, that the tenant failed to pay rent of $1,750.00 for February 2022, and rent of $1,776.25 for each month from July to December 2022, totalling $12,407.50. Therefore, I find that the landlords are entitled to $12,407.50 total in rental arrears from the tenant.

The landlords did not apply for parking fees in their application, they only applied for unpaid rent. While the landlords included unpaid parking fees in their total rent calculation, I find that the landlords did not file a separate application for parking fees or other loses, aside from unpaid rent. Therefore, I have not made a decision regarding parking fees.

As the landlords were partially successful in their application, I find that they are entitled to recover the $100.00 filing fee from the tenant.

The landlords continue to hold the tenant's security and pet damage deposits, totalling $1,750.00. Over the period of this tenancy, interest is payable on the deposits. No interest is payable for the years 2021 or 2022. Interest of 1.95% is payable for the year 2023. Interest is payable from January 1 to 31, 2023, since the date of this hearing and decision is January 31, 2023. This results in $2.90 interest for 8.49% of the year based on the RTB online deposit interest calculator.

The landlords applied to retain the tenant's deposits in their application. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlords to retain the tenant's entire security and pet damage deposits, totalling $1,750.00, plus interest of $2.90, totalling $1,752.90, in partial satisfaction of the monetary claim. I issue a monetary order of $10,754.60 for the balance, to the landlords.

Conclusion

The tenant's two applications are dismissed in their entirety, without leave to reapply.

The landlords' application for an order of possession for unpaid rent and for cause is dismissed without leave to reapply.

I order the landlords to retain the tenant's entire security and pet damage deposits of $1,750.00, plus interest of $2.90, totalling $1,752.90, in partial satisfaction of the monetary claim.

I issue a monetary order in the landlords' favour in the amount of $10,754.60 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 31, 2023

Residential Tenancy Branch