



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPRM-DR, FFL

Introduction

This hearing dealt with the adjourned Direct Request Application by the Landlord filed under the Residential Tenancy Act (the “Act”), requesting an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the Notice) issued on March 6, 2019, for a monetary order for unpaid rent and utilities, and to recover the filing fee paid for this application. The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”) attended the hearing and were affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered. Section 59 of the Act states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the Tenant had been served with the Notice of Hearing documents by Canada Post Registered mail, sent on April 11, 2019, a Canada post tracking number was provided as evidence of service. I find that the Tenant had been duly served with the Notice of Hearing in accordance with the Act.

The Landlord was provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession pursuant to section 55 of the *Act*?
- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The Landlord testified that the tenancy began on March 1, 2018, as a one-year fixed term tenancy; rent in the amount of \$1,325.00 is to be paid by the first day of each month and that the Tenant had paid a \$650.00 security deposit and a \$650.00 pet damage deposit at the outset of this tenancy. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that the Tenant was served with the Notice to End Tenancy by posting it to the front door of the rental unit on March 6, 2019, listing an effective date of March 16, 2019. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant had only made a partial payment toward the March 2019 rent, in the amount of \$950.00 that the Tenant had not paid the rent for the subsequent months of April and May 2019.

The Landlord testified that the Tenant abandoned the rental unit on May 6, 2019, and that they no longer required an Order of Possession to enforce the Notice. However, the Landlord is requesting a Monetary Order for the outstanding rent for March, April and May 2019. The Landlord testified that they are only seeking a prorated rent for May for the period between May 1 to May 6, 2019.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

Landlord's notice: non-payment of rent

- 46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the rental unit to which the notice relates by that date.

I accept the undisputed testimony of the Landlord that the Tenant did not pay the full outstanding rent within five days of receiving the Notice. Therefore, I find that the Tenant has not paid the rent or disputed the Notice, within the legislated timeline and is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

I also accept the testimony of the Landlord, and I find that the Tenant abandoned the rental unit as of May 6, 2019, and that the Tenant has not paid the full outstanding rent for March, April and the first 6 days of May 2019, for this tenancy.

May Rent	\$1,325.00
Days in Month	31
Daily Rate	\$42.74
Days Tenant was in the rental unit	6
Rent due for May 2019	\$256.45

I find that the Landlord has proven their entitlement to a monetary award in the amount of \$1,956.45 for the outstanding rent; consisting of \$375.00 for March 2019, \$1,325.00 for April 2019, and \$256.45 for the prorated recovery of the May 2019 rent as requested. I grant permission to the Landlord to retain the security deposit and pet damage deposit for this tenancy in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in this application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Landlord a monetary order in the amount of \$756.45; consisting of \$1,956.45 in unpaid rent, \$100.00 for the recovery of the filing fee, less the \$650.00 security deposit and the \$650.00 pet damage deposit that the Landlord is holding for this tenancy.

<u>Rent</u>	<u>Due</u>	<u>Paid</u>	<u>Outstanding</u>
March 2019	\$1,325.00	950.00	\$375.00
April 2019	\$1,325.00	0.00	\$1,325.00
May 1-6, 2019	\$256.45	0.00	\$256.45
Unpaid Rent			\$1,956.45
	Security Deposit Held		-\$650.00
	Pet Damage Deposit		-\$650.00
	Filing fee		\$100.00
	Due		\$756.45

Conclusion

I grant the Landlord a **Monetary Order** in the amount of **\$756.45**. The Landlord is provided with this Order in the above terms, and 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: May 23, 2019

Residential Tenancy Branch