



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

On June 18, 2019, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, the Tenant did not make an appearance. All parties provided a solemn affirmation.

The Landlord advised that he served the Tenant with the Notice of Hearing package by hand with a witness, on or around June 19, 2019. Based on this affirmed testimony, I am satisfied that the Tenant was served with the Notice of Hearing package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the Notice?
- Is the Landlord entitled to compensation for unpaid rent?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord advised that the tenancy started “almost two years ago”; however, he was not sure of the actual date. Rent was established at \$600.00 per month, due on the first day of each month. A security deposit was not paid.

The Landlord submitted that the Tenant had not paid May or June 2019 rent in full. He stated that he served the Notice to the Tenant by posting it to the Tenant’s door on June 2, 2019 which indicated that \$1,200.00 was outstanding on June 1, 2019. He stated that the Tenant did not pay the rent or dispute the Notice. The Notice indicated that the effective end date of the tenancy was June 12, 2019. The Landlord is seeking compensation for July rent as well.

As the Tenant had not moved out by the effective date of the Notice, the Landlord applied for an Order of Possession. However, he advised that after making his Application, the Tenant had given up vacant possession of the rental unit on or around June 22, 2019. He stated that he took possession of the rental unit back “in late June or early July or something like that.”

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord’s 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice.

If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on June 5, 2019. According to Section 46(4) of the *Act*, the Tenant has 5 days pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the fifth day fell on Monday June 10, 2019, the Tenant must have paid the rent or made her Application by this day at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant receiving the Notice. Moreover, the Tenant did not establish that she had a valid reason for withholding the rent pursuant to the *Act* nor did she dispute the Notice.

As the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession. However, as the Tenant has already vacated the rental unit on or around June 22, 2019, I find that granting an Order of Possession was unnecessary.

With respect to the unpaid rent, as outlined above, the undisputed evidence is that the rent for May and June 2019 was not paid in full. As such, I also find that the Landlord is entitled to compensation for unpaid rent. As the Landlord appeared to have vacant possession of the rental unit back after June 22, 2019, I decline to award the Landlord July 2019 rent. Ultimately, I grant the Landlord a monetary award in the amount outlined below.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
May 2019 rent arrears	\$600.00
June 2019 rent arrears	\$600.00
Recovery of Filing Fee	\$100.00
Total Monetary Award	\$1,300.00

Conclusion

I provide the Landlord with a Monetary Order in the amount of **\$1,300.00** 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: August 2, 2019

Residential Tenancy Branch