



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARAMOUNT LAND CORP. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL

Introduction

On November 3, 2020, the Landlord made an Application for a Direct Request 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’s Application was originally set down for a hearing on February 12, 2021 at 11:00 AM. M.D. attended this hearing as an agent for the Landlord; however, the Tenant did not make an appearance at any point during the 10-minute teleconference. This hearing was subsequently adjourned for reasons set forth in the Interim Decision dated February 12, 2021. This Application was then set down for a reconvened hearing on March 23, 2021 at 11:00 AM.

M.D. attended the reconvened hearing as an agent for the Landlord; however, the Tenant did not make an appearance at any point during the 16-minute reconvened teleconference.

At the original hearing, M.D. stated that the Tenant gave up vacant possess of the rental unit on or around November 10, 2020 and he did not leave a forwarding address. The Landlord attempted to serve the Tenant the Notice of Hearing and evidence package by email to the Tenant on December 3, 2020 without authorization to do so through a Substituted Service application. Regardless, the Tenant did not respond.

M.D. submitted that the Landlord enlisted the services of a skip tracer and the Tenant’s new address was found on January 21, 2021. The Notice of Hearing and evidence package was then served by courier to the Tenant at this new address; however, it was served on February 4, 2021.

Based on the submitted documentary evidence from the skip tracer confirming the Tenant's new address, I was satisfied that this was a valid service address for the Tenant. As a consequence, I Ordered that the hearing would be adjourned to allow the Tenant a sufficient opportunity to respond.

At the reconvened hearing, M.D. advised that the Tenant was served the Notice of Hearing, evidence package, and Interim Decision by Xpresspost on February 16, 2021 (the Xpresspost tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on February 19, 2021. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the Act, I am satisfied that the Tenant was duly served the Notice of Hearing, evidence package, and Interim Decision. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

He also advised that the Tenant was served with the Notice of Hearing documents again by registered mail on March 2, 2021, with additional evidence and further monetary claims (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that this package was delivered on March 4, 2021. Based on this undisputed evidence, I am satisfied that the Tenant was duly served these new documents. As such, I have accepted the Landlord's additional evidence and will consider it when rendering this Decision.

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?
- Is the Landlord entitled to a Monetary Order for compensation?
- 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.

M.D. advised that the tenancy started on December 15, 2006 and the tenancy ended when the Tenant gave up vacant possession of the rental unit on or around November 10, 2020. Rent was currently established at an amount of \$1,650.00 per month and it was due on the first day of each month. A security deposit of \$475.00 was also paid. A copy of the written tenancy agreement was submitted as documentary evidence.

He stated that the Notice was served to the Tenant by being posted to the Tenant's door on October 20, 2020. The Notice indicated that \$1,650.00 was owing for rent on October 1, 2020. The effective end date of the tenancy was noted as October 30, 2020.

He advised that the rent was paid via post dated cheques; however, the Tenant's October rent cheque was returned due to insufficient funds. He submitted that the Tenant did not pay any amount of rent after service of the Notice, nor did the Tenant dispute the Notice either. As well, he testified that the Tenant's November 2020 rent cheque was also returned due to insufficient funds. The Tenant did not have any authorization to withhold any amount of rent. As the Tenant has already vacated the rental unit, an Order of Possession is not necessary to consider. However, the Landlord is seeking a Monetary Order for rental arrears in the amount as follows:

- October 2020 rent: \$1,650.00
- November 2020 rent: \$1,650.00
- Total rental arrears: **\$3,300.00**

In addition, the Landlord is seeking compensation in the amounts of **\$38.76** for the cost of serving documents by registered mail, **\$236.25** for the cost of the skip tracer fee, and **\$682.50** for the cost of disposal of furniture that the Tenant left behind at the end of the tenancy. M.D. referenced documentary evidence that was submitted to support the cost of the skip tracer fee and the disposal of refuse. When M.D. was asked if he amended the Application pursuant to Rule 4.1 of the Rules of Procedure to update the Landlord's claims, he stated that he was unaware that he was required to do so.

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.

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 or Utilities. 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.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Tenant was served the Notice on October 20, 2020 by being posted to the door. According to Section 46(4) of the *Act*, the Tenant had 5 days to 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 Tenant was deemed to have received the Notice on October 23, 2020, he must have paid the rent in full by or disputed the Notice by October 28, 2020 at the latest. The undisputed evidence is that the Tenant did not pay any rent, nor did he dispute the Notice. Given that the Tenant did not have authorization from the Landlord or a valid reason under the *Act* to withhold the rent, I find that the Tenant breached the *Act* and jeopardized his tenancy.

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 pursuant to Sections 46 and 55 of the *Act*. However, as the Tenant vacated the rental unit already, an Order of Possession does not need to be granted.

With respect to the Landlord's request for a monetary award for the rental arrears, I grant the Landlord a monetary award in the amount of **\$3,300.00**.

Regarding the Landlord's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

While M.D. did not amend this Application pursuant to Rule 4.1 of the Rules of Procedure, I am satisfied that these were additional costs incurred by the Landlord as a result of the Tenant's actions. As well, I find that the Tenant could reasonably anticipate being held liable for these claims. As the Tenant was served these documents more than 14 days prior to the hearing in accordance with Rule 4.6, I have accepted this amendment and will consider the Landlord's submissions on these additional claims.

With respect to the Landlord's request for compensation in the amount of \$38.76 for the cost of serving documents by registered mail, there are no provisions in the *Act* for compensation of these amounts. As such, I dismiss this claim in its entirety.

Regarding the Landlord's request for compensation in the amount of \$236.25 for the cost of the skip tracer fee, I am satisfied from the undisputed evidence that the Tenant did not provide a forwarding address in writing and that the Landlord was forced to hire a skip tracer to find the Tenant's new address. As such, I grant the Landlord a monetary award in the amount of **\$236.25** to satisfy this claim.

Finally, with respect to the Landlord's request for compensation in the amount of \$682.50 for the cost of disposal of furniture, I am satisfied from the undisputed evidence that the Tenant left items behind at the end of the tenancy that the Landlord was forced to dispose of. As such, I grant the Landlord a monetary award in the amount of **\$682.50** to rectify this issue.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 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

October 2020 rent owed	\$1,650.00
November 2020 rent owed	\$1,650.00
Skip tracer fee	\$236.25
Furniture disposal	\$682.50
Filing fee	\$100.00
Security deposit	-\$475.00
TOTAL MONETARY AWARD	\$3,843.75

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$3,843.75** 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: March 23, 2021

Residential Tenancy Branch