



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$1,400 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:13 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's agent ("**JP**") 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 JP and I were the only ones who had called into this teleconference.

JP testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on December 31, 2020. She provided a Canada Post tracking number confirming this mailing (which is reproduced on the cover of this decision) and status tracking sheet showing the package was delivered on January 15, 2020. I find the tenant was served with the required material on that date.

Preliminary Issue – Amend to Increase Monetary Claim

At the hearing, the landlord sought to further amend its application to vary the amount of rent owing. JP testified that the tenant paid \$1,400 on February 2, 2021 and that, in January, the landlord agreed to waive December 2020 rent due to heavy rain causing some flooding in the rental unit. However, JP testified that, aside from the February 2,

2021 payment, the tenant has not paid any rent in 2021. As such, the tenant's payment history and current arrears is as follows:

	Owing	Paid	
01-Oct-20	\$650		
01-Oct-20		-\$550	
01-Nov-20	\$650		
01-Dec-20	\$650		
01-Jan-21	\$650		
01-Jan-21		-\$650*	
01-Feb-21	\$650		
02-Feb-21		-\$1,400	
01-Mar-21	\$650		
Total	\$ 3,900	-\$2,600	\$1,300

*credit for December rent

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.

In this case, the landlord is seeking compensation for unpaid rent that has varied since it first applied for dispute resolution, I find that the variation in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to vary the monetary claim to reflect the credits and debits to the tenant's rent account in the months following the application being made (that is, the amount of the landlord's monetary claim is amended to \$1,300).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$1,300;
- 3) recover the filing fee;

Background and Evidence

While I have considered the documentary evidence and the testimony of JP, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the JP's claims and my findings are set out below.

The parties entered into a written, fixed-term tenancy agreement starting December 1, 2019. Monthly rent is \$650 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$325 and a pet damage deposit of \$325.

JP testified that, as of December 1, 2020, the tenant was \$1,400 in rental arrears, due to non-payment of November and December 2020 rent, and partial payment of October 2020 rent. She prepared and served the tenant with a 10 Day Notice to End Tenancy (the "**Notice**") on December 3, 2020 by posting it to the door of the rental unit. It listed an effective date of December 15, 2020. She testified that the tenant neither disputed the Notice nor paid the full amount of arrears within five days of it being posted.

As stated above, the tenant failed to pay January, February, or March 2021 rent. However, on February 2, 2021, the tenant paid the landlord \$1,400. Additionally, JP testified that, in January 2021, the landlord waived December 2020 rent due to heavy rains causing flooding in the rental unit, and because JP wanted to "cut [the tenant] a break".

As such, at the time of this hearing, rental arrears are \$1,300.

Analysis

Section 26 of the Act requires tenants to pay rent when it is due:

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.

Based on JP's uncontested testimony, I find that the tenant I currently \$1,300 in rental arrears.

Section 46 of the Act states:

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.

[...]

(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 find that the Notice was posted on the tenant's door on December 3, 2020. Per section 90 of the Act, it is deemed served three days later (December 6, 2020). The tenant neither paid the full amount of arrears owing (\$1,400) nor disputed the Notice within five days of being deemed served with the Notice. Accordingly, she is conclusively presumed to have accepted that the tenancy has ended on the effective date of the Notice (December 15, 2020). The fact she paid \$1,400 on February 2, 2021 is not sufficient to displace this presumption. The presumption is *conclusive*.

As such, the landlord is entitled to an order of possession effective seven days after the order is served on the tenant by the landlord.

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

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$1,400, representing repayment of rental arrears owed to date, and of the filing fee.

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within seven days of being served with a copy of this decision and attached orders by the landlord.

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 22, 2021

Residential Tenancy Branch