



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, OPRM-DR, FFL, MNRL-S, OPR, FFL

Introduction

On December 31, 2020, the Landlord made an Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (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*.

On January 28, 2021, the Landlord made another Application for Dispute Resolution seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent pursuant to Section 46 of 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*.

This hearing was scheduled to commence via teleconference at 11:00 AM on April 19, 2021.

The Landlord attended the hearing; however, the Tenant did not attend at any point during the 17-minute teleconference. At the outset of the hearing, I advised the Landlord that recording of the hearing was prohibited. He was reminded to refrain from doing so and he acknowledged this term. All parties in attendance provided a solemn affirmation.

The Landlord advised that he served the first Notice of Hearing and evidence package to the Tenant by hand on January 26, 2021 and he provided a proof of service form that was signed by the Tenant to confirm service. He advised that he served the second Notice of Hearing and evidence package to the Tenant by hand on February 1, 2021 and he provided a proof of service form that was signed by the Tenant to confirm service. Based on this undisputed evidence, I am satisfied that the Tenant was

sufficiently served the two Notice of Hearing and evidence packages. As such, I have accepted the Landlord's 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 apply the security deposit towards this debt?
- Is the Landlord entitled to recover the filing fees?

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 on July 1, 2020, that rent was established at an amount of \$1,330.00 per month, and that it was due on the first day of each month. A security deposit of \$250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

While multiple 10 Day Notices to End Tenancy for Unpaid Rent were served, he testified that the Tenant gave up vacant possession of the rental unit on April 5, 2021. He stated that the Tenant owed \$810.00 for January 2021 rent and that the Tenant did not pay any rent for February, March, or April 2021. Thus, the Landlord is seeking a Monetary Order in the amount as follows:

- January 2020 rent: \$810.00
- February 2020 rent: \$1,330.00
- March 2020 rent: \$1,330.00
- April 2020 rent: \$1,330.00
- Total rental arrears: **\$4,800.00**

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 or utilities 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 or utilities 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.

With respect to the Landlord's request for an Order of Possession for the unpaid rent, as the Tenant has given up vacant possession of the rental unit already, it is not necessary to grant the Landlord an Order of Possession. Regarding the unpaid rent however, the undisputed evidence from the Landlord is that the Tenant did not pay the entire amount of January 2021 rent, and did not pay any rent for February, March, or April 2021. As such, I am satisfied that the Landlord should be granted a monetary award in the amount of **\$4,800.00** for the outstanding rental arrears.

While the Landlord was successful in these Applications, the Landlord made the second Application unnecessarily. As such, I find that the Landlord is entitled to recover one of the \$100.00 filing fees. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these debts.

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

Item	Amount
Rental arrears for January 2021	\$810.00
Rental arrears for February 2021	\$1,330.00
Rental arrears for March 2021	\$1,330.00
Rental arrears for April 2021	\$1,330.00
Filing Fee	\$100.00
Security deposit	-\$250.00
Total Monetary Award	\$4,650.00

Conclusion

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$4,650.00** 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: April 19, 2021

Residential Tenancy Branch