



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR, FFL

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on January 19, 2021, wherein the Landlord sought an Order of Possession and monetary compensation from the Tenants based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities issued on December 8, 2020 (the "Notice"), as well as recovery of the filing fee.

Only the Landlord's representatives, M.Y. and W.L. called into the hearing. M.Y. gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 11:12 a.m. Additionally, 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 the Landlord's representatives and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. M.Y. testified that they served the Tenants with Notice of the Hearing and the Application by registered mail. I accept M.Y.'s testimony in this respect and find the Tenant were duly served with notice of the hearing and I proceeded with the hearing in their absence.

The Landlord's representatives were cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. They confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's representatives' submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's representatives and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Have the Tenants breached the *Act* or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Landlord be authorized to retain the Tenants' security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement confirming that the tenancy began July 15, 2020, monthly rent was payable in the amount of \$1,980.00 and the Tenants paid a \$990.00 security deposit.

M.Y. testified that the Tenants only paid \$414.00 for the month of November 2020 and failed to pay any rent for December 2020. As a result, the Landlord issued the Notice.

Documentary evidence indicates the Notice was served by registered mail sent December 8, 2020. Section 90 of the *Act* provides that documents served in this manner are deemed served five days later. Accordingly, I find that the Tenants were served with the Notice as of December 13, 2020.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, December 18, 2020. The Notice also informed that the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. M.Y. testified that the Tenants did neither and failed to pay rent for January through May 2021.

Analysis

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

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.

(6)If

(a)a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b)the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

A tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

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.

There are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,
4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenants had no such legal authority to withhold rent. I therefore find that the Tenants failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept M.Y.'s testimony that they served the Notice on the Tenants on December 8, 2020. I find that the Tenants did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and are therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I have reviewed the Notice and find that it complies with section 52 in terms of form and content; consequently, and pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlord has established a total monetary claim of **\$13,546.00** comprised of the following:

November 2020 rent	\$1,566.00
December 2020 rent	\$1,980.00
January 2021 rent	\$1,980.00
February 2021 rent	\$1,980.00

March 2021 rent	\$1,980.00
April 2021 rent	\$1,980.00
May 2021 rent	\$1,980.00
Filing fee	\$100.00
TOTAL AWARDED	\$13,546.00

I order that the Landlord retain the security deposit of \$990.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$12,646.00**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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 04, 2021

Residential Tenancy Branch