



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OPR, MNR, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenant.

The landlords' application is seeking orders as follows:

1. For an order of possession;
2. For a monetary order for unpaid rent;; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The landlord attended the hearing. The tenant did not attend, although they filed their application for dispute resolution and on June 4, 2021, they received an email notification from the Residential Tenancy Branch, reminding them to attend on this day, June 7, 2021.

Tenant's application

The tenant did not appear. The tenant's application is dismissed.

Landlord's application

As the tenant did not attend the hearing, I must consider service of the landlords' application for dispute resolution.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on May 5, 2021, by registered mail.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on October 15, 2019. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$725.00 was paid by the tenant.

The landlord stated that the tenant abandoned the property on May 24, 2021; however, the tenant has left some items behind of a value under \$500.00. The landlord stated they would like to ensure they have legal possession of the premise and would still like an order of possession.

The landlords claim as follows:

a.	Unpaid Rent	\$5,550.00
b.	Filing fee	\$ 100.00
	Total claimed	\$5,650.00

The landlord submits the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, issued on March 18, 2021. The landlord stated the tenant did not pay the outstanding rent.

The landlord submits the following history of rent payments.

- September 2020 : rent paid in full September 29th.
- October 1st 2020: no rent payments received owes,

- \$1450 November 1st 2020: no rent payments received owes, \$1450 + \$1450 = \$2900 November 20th received \$2900, rents paid in Full
- December 1st 2020: no rent payment received owes, \$1450 December 16Th received \$1000, remaining owing now \$450
- January 1st 2021: no rent payment received owes, \$1450 + previous \$450 = \$1900 now owing January 19th received \$725, remaining owing now \$1175
- February 1st 2021: no rent payment received, owes \$1450 + previous \$1175 = \$2625 February 19th received \$1000, remaining owing now \$1625
- March 1st 2021: no rent payment received, owes \$1450 + previous \$1625 = \$3075 March 1st received \$425, remaining owing now \$2650 Michelle sends email that states a repayment plan as follows; March 16th \$1000 March 19th \$1000 March 30th \$600 (\$50 still owing) [tenant's name removed] did not make March 16th payment and a 10 day notice was issued March 18th 2021)
- April 1st 2021: no rent payment received, owes \$1450 + previous \$2650 = \$4100 total rent arrears May 1st 2021: no rent payment received, owes \$1450 + previous \$4100 = **\$5550 total arrears owed.**

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

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.

...

I accept the undisputed evidence of the landlord that the tenant failed to pay rent in the total amount of \$5,500.00. I find the tenant breached the Act, when they failed to pay rent, and this caused losses to the landlords. Therefore, I grant the landlords for unpaid rent as shown above the amount of **\$5,500.00**.

I find that the landlords have established a total monetary claim of **\$5,600.00** comprised of unpaid rent and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$725.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$4,875.00**.

As the tenant has failed to provide a forwarding address to the landlords, and the tenant is no longer living at the service address noted in their application, **I grant the landlords a substituted service order, to be allowed to serve the tenant the above monetary order by email** as the tenant also provided an email address in their application for service. I have noted the email address of the tenant on the covering page of this decision.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

In this case, the tenant abandoned the rental unit on May 24, 2021. I find it not prejudicial to the tenant to grant the landlords an Immediate order of possession of the rental unit. **I grant the landlords a substituted service order, to be allowed to serve the tenant the order of possession by email.**

Conclusion

The tenant did not appear and failed to pay rent. The tenant's application is dismissed without leave to reapply.

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are granted a formal order for the balance due. The landlords are granted an immediate order of possession of the rental property, as it was abandoned by the tenant on May 24, 2021. The landlords are granted a substituted service order on the tenant.

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: June 07, 2021

Residential Tenancy Branch