



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRL-S, OPR, FFL**

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$2,130.75 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 11:20 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's managing agent ("**KF**") 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 KF and I were the only ones who had called into this teleconference.

KF testified she served that the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on March 26, 2021. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with this package on March 31, 2021, five days after KF mailed it, in accordance with sections 88, 89, and 90 of the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$2,130.75;
- 3) recover the filing fee;
- 4) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

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

The tenant and a prior landlord entered into the tenancy agreement in April 2001. NO written tenancy agreement from this time was entered into evidence. The landlord took over managing the residential property in 2014. The landlord provided a undated completed copy of a tenancy agreement (signed by the tenant, but not the landlord) that was entered into sometime after 2018 (the agreement uses the 2018 version of the RTB's standard form tenancy agreement (Form #RTB-1). The tenant's current monthly rent is \$922 and he receives a \$479 subsidy each month. He is responsible for paying \$423 per month. The tenant paid a security deposit of \$414.50. KF testified that the landlord retains this deposit, and that it has accrued \$24.13 in interest, which the landlord holds in trust for the tenant.

KF testified that the tenant has not been current in his rent payments since June 2010. She submitted a copy of the tenant's ledger for the period of March 1, 2020 to March 24, 2021. This ledger has a starting balance of \$1,750.75 owed, and a closing balance of \$2,150.75 owed. I note that between April 1, 2020 and August 17, 2020, the tenant made his rent payments in full (due to emergency COVID-19 regulations, any arrears during this period would have been subject to a repayment plan, but as none exist, there is no requirement for the landlord to have provided a repayment plan to the tenant).

On January 12, 2021, the landlord posted a 10 Day Notice to End Tenancy for Non-Payment of Rent (the "**Notice**") on the door of the rental unit. It specified rental arrears of \$2,130.75 owed as of January 1, 2021 and listed an effective date of January 31, 2021. The ledger submitted into evidence by the landlord shows the rental arrears to be \$2,130.75 as of the date the Notice was issued.

KF testified that the tenant did not pay the balance of arrears owed within five days of receiving the Notice, nor did he apply to dispute the Notice with the Residential Tenancy Branch.

KF testified that the tenant has incurred a further \$20 in arrears between the date the Notice was served and the date the landlord made the application. The landlord has not applied to recover any part of these arrears.

Analysis

Based on the testimony of KF, I find that the tenant was served with the Notice on January 12, 2021 by posting it on the door of the rental unit. It is deemed served three days later (per section 90 of the Act).

I accept KF's testimony that the tenant is obligated to pay monthly rent of \$423 and that the landlord currently holds \$438.63 in trust for the tenant (\$414.50 deposit + \$24.13 interest).

Based on the ledger submitted into evidence and the uncontroverted testimony of KF, I accept that as of January 12, 2021, the tenant was in rental arrears of \$2,130.75. The tenant failed to pay this amount within five days of being served with the Notice and did not dispute the Notice within five days, or at all.

Section 46 of the Act, in part, 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.

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[...]

(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 the Notice complies with section 52 of the Act.

As such, the tenant is conclusively presumed to have accepted that the tenancy ended on January 31, 2021. At the hearing, KF asked that an order of possession against the tenant be effective on July 31, 2021.

I find that the landlord is entitled to an order of possession and a monetary order of \$2,130.75 for unpaid rent owed by January 12, 2021.

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

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit and accrued interest in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$1,792.12, representing the following:

Description	Amount
Arrears as of January 12, 2021	\$2,130.75
Filing Fee	\$100.00
Security deposit and interest credit	-\$438.63
Total	\$1,792.12

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by July 31, 2021 at 1:00 pm.

I order that the landlord provide a copy of this decision and attached orders to tenant immediately upon receiving it from the Residential Tenancy Branch.

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: July 9, 2021

Residential Tenancy Branch