



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

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

Introduction

On April 12, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession 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*, seeking to apply the security deposit and pet damage deposit towards this debt pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

R.N. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 16-minute teleconference. At the outset of the hearing, I informed R.N. that recording of the hearing was prohibited and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

He advised that the Notice of Hearing and evidence package was served to the Tenant by hand on April 22, 2021 and a proof of service form signed by the Tenant was submitted to corroborate service. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant has been served the Notice of Hearing and evidence package. 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 and pet damage deposit towards this debt?
- Is the Landlord entitled to recover the filing fee?

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.

R.N. advised that the tenancy started on October 1, 2020 and ended on July 22, 2021 when the Tenant gave up vacant possession of the rental unit. Rent was established at an amount of \$1,950.00 per month and was due on the first day of each month. A security deposit of \$975.00 and a pet damage deposit of \$975.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He testified that the Notice was served by being posted to the Tenant's door on February 16, 2021 and a signed proof of service form was submitted to corroborate service. The Notice indicated that \$3,925.00 was owing for rental arrears and was due on February 1, 2021. The effective end date of the tenancy was noted as February 26, 2021 on the Notice.

He advised that the Tenant had not paid January 2021 rent or parking, or February 2021 rent or parking, so the Notice was served. He stated the Tenant signed a separate parking agreement for \$25.00 per month. In addition, the tenancy agreement indicates that the Landlord can charge \$25.00 for insufficient funds for payment of rent. He submitted that the Landlord is seeking compensation in the following amounts:

Rental arrears for January 2021	\$1,950.00
Parking for January 2021	\$25.00
Rental arrears for February 2021	\$1,925.00
NSF fee for February 2021 rent	\$25.00
Parking for February 2021	\$25.00

Rental arrears for March 2021	\$1,950.00
NSF fee for March 2021 rent	\$25.00
Parking for March 2021	\$25.00
Rental arrears for April 2021	\$1,950.00
Parking for April 2021	\$25.00
Rental arrears for May 2021	\$1,950.00
Rental arrears for June 2021	\$1,950.00
Rental arrears for July 2021	\$1,950.00
Rental arrears for August 2021	\$1,950.00
Total Monetary Award	\$15,725.00

He explained that the Landlord offered a \$25.00 discount promotion off of rent in February 2021 if the Tenant signed an agreement for automatic payment of rent. As the Tenant signed this agreement, the request for February 2021 rent has been reduced accordingly. Documentary evidence was submitted to support the Landlord's claims for compensation.

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 when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent 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.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on February 19, 2021. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

However, as the Tenant gave up vacant possession of the rental unit, it is not necessary to consider the merits of an Order of Possession.

Regarding the Landlord's claims for monetary compensation, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$15,725.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain this amount from the security deposit in partial satisfaction of this claim. In accordance with Section 38(7) of the *Act*, the Landlord must deal with the pet damage deposit pursuant to the *Act*.

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	\$1,950.00
Parking for January 2021	\$25.00
Rental arrears for February 2021	\$1,925.00
NSF fee for February 2021 rent	\$25.00
Parking for February 2021	\$25.00
Rental arrears for March 2021	\$1,950.00
NSF fee for March 2021 rent	\$25.00

Parking for March 2021	\$25.00
Rental arrears for April 2021	\$1,950.00
Parking for April 2021	\$25.00
Rental arrears for May 2021	\$1,950.00
Rental arrears for June 2021	\$1,950.00
Rental arrears for July 2021	\$1,950.00
Rental arrears for August 2021	\$1,950.00
Filing fee	\$100.00
Security deposit	-\$975.00
Total Monetary Award	\$14,850.00

Conclusion

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$14,850.00** 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: August 13, 2021

Residential Tenancy Branch