



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING CHARITABLE
ASSOCIATION and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

On June 8, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*"), seeking a Monetary Order for compensation for the unpaid rent pursuant to Section 67 of the *Act*, seeking to apply the security 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*.

E.S. attended the hearing as an agent for the Landlord, and the Tenant attended the hearing as well. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

Prior to addressing issues regarding service of documents, the Tenant requested an adjournment because he had evidence on his electronic devices that he could not submit as evidence because he did not know how. In addition, he stated that he suffers from poor eyesight, which caused him difficulty in addressing the issues in this Application.

Rule 7.9 of the Rules of Procedure provides the applicable criteria for the granting of an adjournment. When considering these adjournment requests, I find it important to note that the Tenant was aware of the matters in this Application in late June 2021 and he had ample time to obtain assistance if he needed it. Furthermore, he provided insufficient medical documentation confirming any health issue that would have prevented him from responding to the Landlord's claims.

As this hearing pertained to a notice to end the tenancy, I found that adjourning the hearing would have been prejudicial to the Landlord. As such, the Tenant's requests for an adjournment were denied. I also find it important to note that the Tenant was advised that if he believed that he had some concerns with difficulty understanding or hearing submissions during the hearing, to inform me of it so that it could be repeated. There was no point at any time during the 42-minute teleconference when the Tenant raised any concerns about a matter that may have gone unheard or was misunderstood. As such, the hearing proceeded.

The Landlord advised that the Tenant was served the Notice of Hearing package by registered mail on June 26, 2021 and the evidence package by registered mail on September 3, 2021. The Tenant confirmed that he received these packages. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Tenant was sufficiently 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.

The Tenant advised that he did not submit any evidence for consideration on this file.

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 for unpaid rent?
- Is the Landlord entitled to a Monetary Order for compensation for unpaid rent?
- Is the Landlord entitled to apply the security 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.

All parties agreed that the tenancy started on August 1, 2013 and that the tenancy ended when the Tenant gave up vacant possession of the rental unit on June 14, 2021. The rent was established at a subsidized amount of \$475.00 per month and it was due on the first day of each month. A security deposit of \$300.00 was also paid. A copy of the tenancy agreement was submitted as documentary evidence.

E.S. advised that the Notice was served to the Tenant by posting it to his door on May 6, 2021. A signed proof of service form was provided to corroborate service. The Notice indicated that \$1,227.00 was owing for rent and that it was due on May 1, 2021. The effective end date of the tenancy was noted as May 16, 2021.

The Tenant confirmed that he received this Notice, and that he did not pay the rent or dispute the Notice.

As the Tenant gave up vacant possession of the rental unit on June 14, 2021, the matter with respect to granting an Order of Possession based on the Notice does not need to be considered.

However, E.S. submitted that the Tenant did not pay any rent for March, April, May, or June 2021. She stated that the Landlord is seeking a Monetary Order in the amount as follows:

- | | | |
|-------------------------|-------------------------------------|-------------------|
| • March 2021 rent: | \$475.00 - \$75.00 rent abatement = | \$400.00 |
| • April 2021 rent: | \$475.00 - \$75.00 rent abatement = | \$400.00 |
| • May 2021 rent: | \$475.00 - \$48.00 rent abatement = | \$427.00 |
| • June 2021 rent: | \$475.00 | \$475.00 |
| • Total rental arrears: | | \$1,702.00 |

All parties agreed that the Tenant gave his notice in writing to end his tenancy on May 31, 2021, effective for June 7, 2021. However, he did not give up vacant possession of the rental unit until June 14, 2021.

The Tenant confirmed that he did not pay any rent for March, April, May, or June 2021, that he did not have a valid reason under the *Act* for not paying the rent, and that he did not have any authorization from the Landlord to withhold the rent.

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 Notice was posted to the Tenant's door on May 6, 2021. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent 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."*

As the Tenant was deemed to have received the Notice on May 9, 2021, he must have paid the rent in full or disputed the Notice by May 14, 2021 at the latest. As the Tenant

did not pay the rent or dispute the Notice, and as the Tenant did not have a valid reason under the *Act* for withholding the rent, I am satisfied that the Tenant breached the *Act*.

As noted above, as the Tenant gave up vacant possession of the rental unit on June 14, 2021, it is unnecessary to grant the Landlord an Order of Possession.

With respect to the issue of the unpaid rent, I am satisfied that the Landlord is owed the rental arrears for these months that the Tenant occupied the rental unit. Consequently, I grant the Landlord a monetary award in the amount of **\$1,702.00** to satisfy this claim.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of this debt outstanding.

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 March 2021	\$400.00
Rental arrears for April 2021	\$400.00
Rental arrears for May 2021	\$427.00
Rental arrears for June 2021	\$475.00
Filing Fee	\$100.00
Security deposit	-\$300.00
Total Monetary Award	\$1,502.00

Conclusion

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$1,502.00** 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: October 5, 2021

Residential Tenancy Branch