



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR MNR-DR FFL

### Introduction

The landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on June 9, 2021 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent, and to recover the filing fee for the Application.

This participatory hearing was convened after the issuance of a July 5, 2021 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord’s application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord’s application to a participatory hearing as they were not satisfied with the service of the notice to end tenancy issued by the landlord to the tenant on May 26, 2021.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 8, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord gave the tenants notice of this dispute resolution hearing by registered mail. A copy of the Canada Post receipt to show this was submitted by the landlord as proof of delivery to single tenant, on July 8, 2021.

The tenant had proper notice of this participatory hearing and did not attend.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord submitted a copy of the Residential Tenancy Agreement. This shows the start of the tenancy was March 1, 2020. The rent was \$1,300 per month, payable on the 25<sup>th</sup>, in advance for the following month. The tenant paid a security deposit amount of \$650 on March 1, 2020. Both parties signed this agreement on March 5, 2020.

The landlord applied for an Order of Possession pursuant to the 10-Day Notice issued to the tenant on May 26, 2021. This was for an unpaid rent amount -- \$4,750 -- that had accumulated and was due on May 25, 2021. This was owing from March (\$850 owing), April (\$1,300), May (\$1,300) and June (\$1,300). The landlord submitted a 'Proof of Service' document to show they handed the 10-Day Notice in person to the tenant on May 26. The tenant's signature is on that document acknowledging they received the 10-Day Notice.

In the hearing the landlord provided that the tenant left on July 14, 2021. This was by taxi, with personal belongings left in the unit. The landlord felt this was the result of their being aware of the upcoming hearing to determine possession and rent amounts owing.

The landlord also applied for a monetary order for \$4,750. In the hearing, the landlord stated the amount does not include any rent amount for July, where the tenant left in the middle of the month. This was when the landlord had to restore the state of the unit to a

rentable condition, after clean up and other modifications. Including the month of July, this would bring the claimed amount to \$6,050.

The tenant did not attend the hearing and provided no documentary evidence in this matter.

### Analysis

I have reviewed the copy of the tenancy agreement. In combination with the landlord's oral testimony on its' terms and the conditions of how it was started with the tenant, I am satisfied that the agreement existed and both parties knew the terms and conditions therein. Based on the testimony of the landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount and schedule for payment. This is each month on the 25<sup>th</sup>.

The *Act* s. 46 states 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.

Following this, s. 46(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Next, s. 46(5) says 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.

Based on the undisputed submissions by the landlord, I find the landlord served the 10-Day Notice to the tenant in person on May 26, 2021. The tenant failed to pay the rent owing by May 31, 2021, within the five days granted under s. 46(4) of the *Act*. There is no evidence before me that the tenant disputed the 10-Day Notice within the five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice. The landlord stated the tenant left the unit on July 14, 2021 – for this

reason, I do not grant an Order of Possession to the landlord. I accept the tenant will not return to the rental unit.

The evidence of the landlord on the monetary claim is not disputed. I grant the landlord their full amount claimed -- \$4,750 – for each of March, April, May and June 2021. For July, I concede one-half month rent, up to the time the tenant departed on July 14, 2021 as presented by the landlord in the hearing. This total amount is \$5,400.

I find that the tenant is obligated to pay \$5,400.00, as per the tenancy agreement. Because the landlord was successful in their Application, I add \$100 to this amount for the Application filing fee.

### Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5,500, for rent owed from March 2021 to July 2021, and recovery of the filing fee for this hearing application. The landlord is provided with this Order 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 s. 9.1(1) of the *Act*.

Dated: October 08, 2021

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Residential Tenancy Branch