



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFT

Introduction

This matter initially proceeded by way of a hearing on August 31, 2021 and dealt with the Landlord's Application for Dispute Resolution filed under the Residential Tenancy Act (the "Act") made on April 27, 2021. The Landlord applied to request an order of possession to enforce a 10-Day Notice for Unpaid Rent and Utilities (the "Notice") issued on April 21, 2021, for a monetary order for unpaid rent, and to recover the filing fee paid for this application. The matter was set for a conference call. A Decision and Orders for that hearing was issued on September 2, 2021, granting the Landlord an Order of Possession and a Monetary Order for this tenancy.

On September 9, 2021, the Tenant applied for a review consideration of the Decision and Orders issued on September 2, 2021. The Tenant's application was granted, and the Review Consideration Decision, dated September 10, 2021, suspended the Decision, the Order of Possession and the Monetary Order dated September 2, 2021, until the Review Hearing scheduled for November 12, 2021. The Tenant's application for review consideration had been granted on the grounds that the Tenant was unable to attend the original hearing because of circumstances beyond their control. Pursuant to section 82(2)(c) of the *Act*, it was ordered that a new hearing be held.

This Review Hearing decision should be read in conjunction with the Original Hearing decision dated September 2, 2021, and the Review Consideration decision dated September 10, 2021.

Both of the Landlords and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlords were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to an order of possession pursuant to section 46 of the *Act*?
- Are the Landlords entitled to a monetary order for unpaid rent?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlords testified that they personally served the Notice to End Tenancy on April 21, 2021, listing an effective date of May 1, 2021, and an outstanding rent amount of \$5,500.00. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant was outstanding in their rent payment by \$6,259.69 for the period between May 2021 to August 2021, as of the August 31, 2021, hearing, and that the Tenant has made payment to that outstanding amount as of the date of these proceedings.

The Tenant testified that they agreed they had not paid the rent as required under their tenancy agreement between May 2021 to August 2021. The Tenant testified that they withheld some of the rent as the Landlords owed them money. The Tenant testified that they did not have a written agreement with the Landlords to reduce the rent for this tenancy, that they had not made emergency repairs to the rental unit, nor did they have an order from the Residential Tenancy branch that awarded them permission to withhold a portion of the rent.

The Tenant testified that as of the date of these proceedings, they had not filed an Application for Dispute Resolution under the *Act* claiming for the money they testified that they feel the Landlords' owes them or to dispute the Notice to end tenancy issued by the Landlords on April 21, 2021.

The Tenant was asked to testify to the amount of rent they had paid for this tenancy between May 2021 and August 2021; the Tenant testified that they did not have those figures in front of them and could not testify to dates or amounts of payments.

Analysis

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

Section 46 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 46(5).

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].*
- (3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*
- (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 accept the Landlords' testimony that they personally served the Notice on April 21, 2021, and I find that the Tenant had until April 26, 2021, to either pay the amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

I also accept the agreed-upon testimony of these parties that the Tenant has not paid the outstanding rent as indicated on the Notice, nor have they disputed the Notice. Therefore, pursuant to section 46(5), I find that the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 55 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not paid the rent within the required timeline or disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Therefore, I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective **two days** after service on the Tenant.

I also accept the agreed-upon testimony of these parties that as of the date of these proceedings, the Tenant had not paid the outstanding rent as indicated on the Notice or as awarded in the original decision for May, June, July, and August 2021 for this tenancy. I find that the Landlord has provided sufficient evidence to prove their

entitlement to a monetary award in the amount of \$6,259.69 for the outstanding rent for May, June, July, and August 2021 for this tenancy.

Section 82 of the *Act* speaks to the Review of Director's decision and order, and provides in part as follows:

Review of director's decision or order

82 (2) *The director may conduct a review*

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Arising from the finding set out above, and pursuant to section 82 of the *Act*, I hereby order that the original Decision, Order of Possession and Monetary Order dated September 2, 2021, are confirmed.

Conclusion

I order that the Decision, Order of Possession and Monetary Order dated September 2, 2021, are confirmed.

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: November 17, 2021

Residential Tenancy Branch