



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR-DR, OPR-DR, FFL

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 27, 2021 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 17, 2021 (the "Notice")
- To recover unpaid rent
- To recover the filing fee

The Landlord appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Landlord who did not have questions when asked. I told the Landlord they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Landlord provided affirmed testimony.

The Landlord advised at the outset that they are seeking to keep the \$750.00 security deposit towards unpaid rent.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord's evidence.

The Landlord confirmed the hearing package and evidence were sent to the Tenant at the rental unit by registered mail on September 05, 2021 and that Tracking Number 572 relates to this. The Landlord submitted a photo of the registered mail package.

I looked Tracking Number 572 up on the Canada Post website which shows notice cards were left in relation to the package September 09, 2021 and September 15, 2021. The website shows the package was unclaimed and returned.

Based on the undisputed testimony of the Landlord, photo and Canada Post website information, I am satisfied the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act") on September 05, 2021. The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the hearing package and evidence September 10, 2021. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted. The tenancy started April 28, 2021 and is for a fixed term ending January 31, 2022. Rent is \$1,500.00. The Landlord testified that the parties agreed rent is due on the 15<sup>th</sup> day of each month and there is a signed agreement in evidence stating this. The Tenant paid a \$750.00 security deposit.

The Notice was submitted. The Notice states that the Tenant failed to pay \$1,250.00 in rent due July 15, 2021. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by the Landlord. The Notice has an effective date of July 27, 2021.

The Landlord testified that the Notice was posted to the door of the rental unit July 17, 2021 and submitted a Proof of Service supporting this.

The Landlord testified as follows. The Tenant had failed to pay \$1,250.00 of July rent when the Notice was issued. The Tenant did not have authority under the *Act* to withhold July rent. The only rent paid after the Notice was issued was \$750.00 on August 19, 2021. The Landlord is not aware of the Tenant disputing the Notice.

The Landlord further testified as follows. There is currently \$6,750.00 in rent outstanding. The Tenant did not have authority under the *Act* to withhold this \$6,750.00 in rent.

The Landlord sought an Order of Possession effective two days after service on the Tenant.

### Analysis

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

- 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...
- (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...

Based on the undisputed testimony of the Landlord, written tenancy agreement and written agreement about rent being due on the 15<sup>th</sup> day of each month, I accept that the Tenant is required to pay \$1,500.00 in rent per month by the 15<sup>th</sup> day of each month.

Based on the undisputed testimony of the Landlord, I accept that the Tenant did not have authority under the *Act* to withhold rent from July to November of 2021. There is no evidence before me that the Tenant did have authority under the *Act* to withhold rent. Therefore, I am satisfied the Tenant was required to pay \$1,500.00 by the 15<sup>th</sup> day of July pursuant to section 26(1) of the *Act*. I also find section 46(3) of the *Act* does not apply.

Based on the undisputed testimony of the Landlord, I accept that the Tenant failed to pay \$1,250.00 of July rent by July 15<sup>th</sup> as required. Given the Tenant failed to pay rent as required, the Landlord was entitled to serve the Tenant with the Notice pursuant to section 46(1) of the *Act*.

Based on the undisputed testimony of the Landlord and Proof of Service, I accept that the Notice was served on the Tenant in accordance with section 88(g) of the *Act* on July 17, 2021. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice July 20, 2021.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on July 20, 2021 to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

I accept the undisputed testimony of the Landlord that the next rent payment made after the Notice was issued was \$750.00 on August 19, 2021 and therefore find the Tenant did not pay the full \$1,250.00 outstanding by July 25, 2021 as required.

I accept that the Landlord is not aware of the Tenant disputing the Notice. There is no evidence before me that the Tenant did dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice within five days of July 20, 2021, I find pursuant to section 46(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended July 30, 2021, the corrected effective date of the Notice. The Tenant was required pursuant to section 46(5)(b) of the *Act* to vacate the rental unit by July 30, 2021.

The Landlord is entitled to an Order of Possession. Pursuant to section 55 of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

Based on the undisputed testimony of the Landlord, I accept that the Tenant currently owes \$6,750.00 in rent. I allow the Landlord to amend the Application to seek the full amount of rent outstanding pursuant to rule 4.2 of the Rules. As stated, I accept that the Tenant did not have authority under the *Act* to withhold rent. Therefore, the Landlord is entitled to recover \$6,750.00 in unpaid rent.

Given the Landlord was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$6,850.00. The Landlord can keep the \$750.00 security deposit pursuant to section 72(2) of the *Act*. I issue the Landlord a Monetary Order for the remaining \$6,100.00 pursuant to section 67 of the *Act*.

### Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to \$6,850.00. The Landlord can keep the \$750.00 security deposit. I issue the Landlord a Monetary Order for the remaining \$6,100.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: December 07, 2021

---

Residential Tenancy Branch