



Dispute Resolution Services

Page: 1

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

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on November 29, 2021, wherein the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on November 9, 2021 (the "Notice"), authority to retain the Tenants' security deposit towards any amounts awarded and recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for 9:30 a.m. on January 13, 2021. Only the Landlord's Property Manager, S.D. called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenants did not call into this hearing, although I left the teleconference hearing connection open until 9:42 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that S.D. and I were the only ones who had called into this teleconference.

As the Tenants did not call in, I considered service of the Landlord's hearing package. S.D. testified that they served the Tenants with the Notice of Hearing and the Application on December 7, 2021 by registered mail. A copy of the registered mail tracking number for both packages is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenants were duly served as of December 12, 2021 and I proceeded with the hearing in their absence.

S.D. was cautioned that recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. She confirmed her understanding of this requirement and further confirmed she was not making recordings of the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Have the Tenants breached the *Act* or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?
2. Should the Landlord be authorized to retain the Tenants security and pet damage deposit towards any amounts awarded?
3. Should the Landlord recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided as follows: the tenancy began April 14, 2021; monthly rent was payable in the amount of

\$1,465.00; and the Tenants paid a security deposit in the amount of \$732.50 and a pet damage deposit in the amount of \$732.50 for a total of \$1,465.00 (the “Deposits”).

The Tenants failed to pay the full amount of rent for the month of April 2021, leaving a balance of \$420.63. The Tenant also failed to pay rent for October 2021. As a result, the Landlord issued the Notice indicating the sum of \$1,885.63 was outstanding as of November 1, 2021.

S.D. testified that the Notice was served by posting to the rental unit door on November 9, 2021. Section 90 of the *Act* provides that documents served in this manner are deemed served three days later. Accordingly, I find that the Tenants were served with the Notice as of November 12, 2021. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service, namely, November 17, 2021. The Notice also explains the Tenants had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution. S.D. testified that the Tenants failed to pay the outstanding rent and failed to apply to dispute the notice.

S.D. further testified that the Tenants also failed to pay rent in December of 2021. The Tenants were also charged a late fee of \$25.00 for July, October and December 2021; S.D. testified that as these fees were permitted by the tenancy agreement, the Landlord sought related compensation.

Analysis

The Landlord issued the Notice pursuant to Section 46 of the *Act* which provides as follows:

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.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them,

the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

A tenant must pay rent when rent is due; this requirement is set forth in section 26 of the *Act* which reads as follows:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There are only four occasions when a tenant has the right to withhold rent:

1. When the Landlord accepts a security deposit over and above the allowable amount (section 19(2));
2. When the Landlord accepts rent over and above the allowable amount (section 43(5));
3. When an Arbitrator authorizes a Tenant to withhold rent (section 72(2)(a)); and,

4. When the Tenant makes emergency repairs under the circumstances prescribed in section 33 of the *Act*

In the case before me I find the Tenants had no such legal authority to withhold rent.

I therefore find that the Tenants failed to pay rent as required by the tenancy agreement and section 26 of the *Residential Tenancy Act*.

I accept the Landlord's testimony that she served the Notice on the Tenants on November 9, 2021. I find that the Tenants did not pay the outstanding rent and did not apply to dispute the Notice within the five days required by section 46(4) and are therefore conclusively presumed pursuant to section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I have reviewed the Notice and find that it complies with section 52 in terms of form and content; consequently, and pursuant to section 55 of the *Act*, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenants. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlord has established a total monetary claim of **\$3,525.63** comprised of the following:

Rent for April 2021	\$420.63
Rent for October 2021	\$1,465.00
Rent for December 2021	\$1,465.00
late fees for July, October and December 2021	\$75.00
Filing fee	\$100.00
TOTAL AWARDED	\$3,525.63

I order that the Landlord retain the Tenants Deposits in the amount of \$1,465.00 in partial satisfaction of the claim and I grant the Landlord an Order under section 67 for the balance due of **\$2,060.63**. This Order may be filed in the Provincial Court (Small Claims Division) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the Deposits in partial satisfaction of the claim, and is granted a Monetary Order for the balance due.

This Decision is final and binding on the parties, except as otherwise provided under the Act, and 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: January 26, 2022

Residential Tenancy Branch