



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

This hearing was reconvened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent pursuant to section 55;
- authorization to recover the Landlord's filing fee for this application from the Tenants.

The Landlord and one of the two Tenants ("VD") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing was reconvened from a non-participatory, *ex parte*, "direct request" proceeding. In an interim decision dated December 22, 2021 ("Interim Decision"), the presiding adjudicator determined that a participatory hearing was necessary to address questions that could not be resolved on the documentary evidence submitted by the Landlord. As a result, this hearing was scheduled and came on for hearing on March 29, 2022, to consider the Landlord's application. Notices of the reconvened hearing were enclosed with the Interim Decision. The Landlord was instructed to serve the NDRP, the Interim Decision and all other required documents, on the Tenants, in accordance with section 89 of the Act.

The Landlord stated he served the NDRP and the Interim Decision ("NDRP Package") on each of the Tenants by registered mail on March 3, 2022. The Landlord submitted the Canada Post receipt and tracking stubs to corroborate his testimony. I find the NDRP

Package was served on each of the two Tenants in accordance with the requirements of section 89 of the Act.

VD stated that the Tenants did not serve any evidence on the Landlord for this proceeding.

Issues to be Decided

Is the Landlord entitled to:

- an order of possession?
- a monetary order for unpaid rent?
- recover the filing fee for the Landlord's application?

Background and Evidence

While I have turned my mind to all 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 principal aspects of the Landlord's application and my findings are set out below.

The Landlord testified the tenancy commenced on September 1, 2019, on a month-to-month basis with rent of \$2,250.00 payable on the 1st of each month. The Landlord stated the Tenants paid a security deposit of \$825.00 which he is still holding on behalf of the Tenants.

The Landlord stated the 10 Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated November 3, 2021 ("10 Day Notice") was served on VD in-person on November 3, 2021. The Landlord submitted a copy of a Proof of Service on Form RTB-34 to corroborate his testimony that the 10 Day Notice was served on VD. I find the 10 Day Notice was served on the Tenants in accordance with section 88 of the Act.

The Landlord stated the Tenants vacated the rental unit on November 26, 2021. The Landlord stated the Tenants owe a total of \$5,350.00 for rental arrears accrued from September through November 2021, calculated as follows:

Date	Rent Owed	Paid	Balance
01-Sep-21	\$2,250.00	0	\$2,250.00
29-Sep-21		\$1,400.00	\$850.00
01-Oct-21	\$2,250.00	0	\$3,100.00
01-Nov-21	\$2,250.00	00	\$5,350.00
Total	\$6,750.00	\$1,400.00	\$5,350.00

VD admitted that the amount claimed by the Landlord was correct. VD acknowledged the Tenants did not make an application for dispute resolution to dispute the 10 Day Notice.

Analysis

1. Landlord's Claim for Order of Possession

Sections 26 of the Act states:

- 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.

The Landlord testified, and VD acknowledged, he served the 10 Day Notice on VD on November 3, 2021.

. Sections 46(1) through 46(5) of the Act 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 *[form and content of notice to end tenancy]*.
- (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.*

[emphasis added in italics]

Pursuant to section 46(5), the Tenants were conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice. Furthermore, I am satisfied upon hearing the undisputed testimony of the Landlord, the Tenants have rental arrears of \$5,350.00. Based on the foregoing, Landlord has demonstrated, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. I have reviewed the 10 Day Notice and find it complies with the section form and content requirements of section 52 of the Act.

Sections 55(2) and 55(4) state:

- 55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:
- (a) a notice to end the tenancy has been given by the tenant;
 - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;

- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

[...]

- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],
 - (a) grant an order of possession, and
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

As the Tenants have already vacated the rental unit, it is unnecessary for me to grant the Landlord an Order of Possession.

2. Monetary Order for Unpaid Rent:

As stated above, I am satisfied the Tenants have rental arrears of \$5,350.00. Pursuant to section 55(4)(b), I order the Tenants pay the Landlord \$5,350.00 in satisfaction of the rental arrears owed. Pursuant to section 72(2)(b), the Landlord may deduct the Tenants' security deposit of \$825.00 from the rental arrears owed by the Tenants, leaving a balance of \$4,525.00.

3. Reimbursement of Landlords' Filing Fee

As the Landlord has been successful in his application, he may recover the \$100.00 filing fee for his application from the Tenants pursuant to section 72(1) of the Act.

Conclusion:

I order the Tenants pay the Landlord \$4,625.00, representing the following:

Description	Amount
Rental Arrears for September through November 21, 2021 inclusive	\$5,350.00
Landlord's Filing Fee for Application	\$100.00
Less Tenants' Security Deposit	825.00
Total	\$4,625.000

This Monetary Order must be served by the Landlord on the Tenants and may be enforced in Provincial 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: March 29, 2022

Residential Tenancy Branch