



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAHIL FARMS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDCT, OLC, RP, RR, FFT, OPR-DR, MNR-DR, FFL

Introduction

On December 14, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") pursuant to Section 46 of the *Residential Tenancy Act* (the "*Act*"), seeking a repair Order pursuant to Section 32 of the *Act*, seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On December 16, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

A.M. and S.M. attended the hearing as agents for the Landlord; however, the Tenant did not attend at any point during the 28-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged this term. As well, all parties in attendance provided a solemn affirmation.

As the Tenant did not attend the hearing, her Application has been dismissed without leave to reapply.

S.M. advised that the Landlord's Notice of Hearing and evidence package was served to the Tenant by registered mail. However, he was not sure when this was done, and he could not locate a registered mail tracking number to corroborate service. Regardless,

as the Tenant made an Application to cancel the Notice, the Landlord's claims for an Order of Possession and a Monetary Order for non-payment of rent can still be addressed pursuant to Section 55 of the *Act*.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

A.M. advised that the tenancy started on April 1, 2021 and that the tenancy ended on or around March 16, 2022 when he declared that the rental unit was abandoned. He stated that rent was established at an amount of \$2,400.00 per month and that it was due on the first day of each month. A security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

S.M. testified that the Notice was served to the Tenant by registered mail on December 3, 2021 and a signed proof of service form was submitted to confirm this. The Notice indicated that \$2,400.00 was owing for rent and it was due on December 1, 2021. The effective end date of the tenancy was noted as December 18, 2021.

A.M. stated that the Tenant did not pay any rent for December 2021, nor has she paid any rent since service of the Notice, and that she did not have any authorization to withhold the rent. As the Tenant has already given up vacant possession of the rental

unit, the Landlord is no longer seeking an Order of Possession. However, the Landlord is still seeking a Monetary Order in the amount as follows:

- December 2021 rent: \$2,400.00
- January 2022 rent: \$2,400.00
- February 2022 rent: \$2,400.00
- March 2022 rent: \$2,400.00

Total rental arrears: **\$9,600.00**

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Notice was served to the Tenant by registered mail on December 3, 2021. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states 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."

As this Notice was served by registered mail on December 3, 2021, it would have been deemed received on December 8, 2021. As such, the Tenant must have paid the rent in full or disputed the Notice by December 13, 2021 at the latest. However, the undisputed evidence is that the Tenant had not paid any rent and that she did not have a valid reason or authority under the *Act* for withholding it. While the Tenant did dispute the Notice, it was done so on December 14, 2021, which was a day late. Regardless, she did not attend the hearing so her Application was dismissed in its entirety.

Based on the consistent, undisputed evidence before me, I am satisfied that the Tenant did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenant did not pay the rent in full and as she had no authority to withhold the rent, I am satisfied that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. As the Tenant has already given up vacant possession of the rental unit, awarding an Order of Possession is unnecessary though.

Regarding the Landlord's claims for monetary compensation, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$9,600.00** for the outstanding rental arrears.

As the Tenant's Application was dismissed in its entirety, the Tenant was not successful in her Application. Thus, I find that the Tenant is not entitled to recover the filing fee.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims. However, in accordance with Section 38(7) of the *Act*, the Landlord **must** deal with the **pet damage deposit** pursuant to the *Act*.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for December 2021	\$2,400.00
Rental arrears for January 2022	\$2,400.00
Rental arrears for February 2022	\$2,400.00
Rental arrears for March 2022	\$2,400.00
Filing Fee	\$100.00
Security deposit	-\$1,200.00
Total Monetary Award	\$8,500.00

Conclusion

Based on the above, the Tenant's Application is dismissed without leave to reapply.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$8,500.00** 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 29, 2022

Residential Tenancy Branch