



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, RPP, RP, OLC, OPR-DR, MNR-DR

Introduction

This hearing dealt with cross applications filed by the parties. On February 8, 2022, 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 return of personal property pursuant to Section 65 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, and seeking an Order to comply pursuant to Section 62 of the *Act*.

On February 16, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act* and seeking a Monetary Order pursuant to Section 67 of the *Act*.

D.B. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 22-minute teleconference. At the outset of the hearing, I informed D.B. that recording of the hearing was prohibited and he was reminded to refrain from doing so. He acknowledged this term. As well, he provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 1:22 AM. Only an agent for the Respondent dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I confirmed during the hearing that the Applicants did not dial in, and I also confirmed from the teleconference system that the only party who had called into this teleconference was a representative of the Landlord.

D.B. also advised that the Tenant did not serve the Landlord with the Notice of Hearing package. As the Tenant did not attend the hearing, and as the Tenant did not serve the Notice of Hearing package, her Application has been dismissed without leave to reapply.

D.B. advised that the Landlord's Notice of Hearing and evidence package was served to the Tenant by registered mail on February 25, 2022 (the registered mail tracking number is noted on the first page of this Decision). He noted that this package was refused by the Tenant and that it was returned to sender. Based on this undisputed testimony, I am satisfied that the Landlord's Notice of Hearing and evidence package has been deemed to have been received five days after it was mailed. As such, I have accepted this evidence and will consider it when rendering this Decision.

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?

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.

D.B. advised that the tenancy started on June 1, 2020 and that the tenancy ended when the Tenant abandoned the rental unit on or around March 31, 2022. Rent was established at an amount of \$1,580.00 per month and was due on the first day of each month. A security deposit of \$790.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

He testified that the Notice was served to the Tenant by posting it to her door on February 2, 2022. A proof of service form was submitted as documentary evidence to corroborate service. The Notice indicated that \$5,154.65 was owing for rent and that it was due on February 1, 2022. However, this amount was incorrect as this also included utilities owing.

He stated that the Tenant did not pay any rent for December 2021, or for January, February, and March 2022. 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: \$1,580.00
- January 2022 rent: \$1,580.00
- February 2022 rent: \$1,580.00
- March 2022 rent: \$1,580.00

Total rental arrears: **\$6,320.00**

The effective end date of the tenancy was noted on the Notice as February 15, 2022.

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 being posted to the Tenant's door on February 2, 2022. 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 being posted to the door on February 2, 2022, it would have been deemed received on February 5, 2022. As such, the Tenant must have paid the rent in full or disputed the Notice by February 10, 2022 at the latest. However, the undisputed evidence is that the Tenant had not paid any rent by this date to cancel the Notice. While the Tenant did dispute the Notice, there was no evidence submitted to support that she had a valid reason, or any authority under the *Act*, for withholding the rent. 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*, as the Tenant has not complied with the *Act*, and as the Tenant's Application was dismissed in its entirety, 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*. However, as the Tenant has already given up vacant possession of the rental unit, it is not necessary to grant an Order of Possession to the Landlord.

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 **\$6,320.00** for the outstanding rental arrears.

Pursuant to Section 67 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	\$1,580.00
Rental arrears for January 2022	\$1,580.00
Rental arrears for February 2022	\$1,580.00
Rental arrears for March 2022	\$1,580.00
Total Monetary Award	\$6,320.00

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 **\$6,320.00** 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: May 12, 2022

Residential Tenancy Branch