



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-DR, OPR-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$710 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

This matter was reconvened from an *ex parte*, direct request proceeding by way of an interim decision issued February 24, 2022.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:27 am in order to enable the tenants to call into the hearing scheduled to start at 11:00 am. The landlord's property manager ("**SD**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that SD and I were the only ones who had called into the hearing.

SD testified she served that the tenants with the interim decision, notice of dispute resolution package, and supporting documentary evidence via registered mail on March 1, 2022. She provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenants as deemed served with these documents on March 6, 2022, five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment of Application

At the hearing SD sought to amend the landlord's application to include a claim for March, April, and May 2022 rent arrears in the amount of \$2,706.28 which she testified remains outstanding, as well as for the recovery of \$200 in non-sufficient funds ("**NSF**") fees.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since it first applied for dispute resolution. I find that the increase in this portion of the landlord's monetary claim should have been reasonably anticipated by the tenants. Additionally, SD argued that the landlord was not permitted to seek the recovery NSF fees in the direct request process, but as this matter was now convened for a hearing, it should be added. I agree and find that this matter could have reasonably been anticipate by the tenants. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for March, April, and May, 2022 rent arrears and for \$200 in NSF fees.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$3,616.28; and
- 3) recover the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of SD, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of SD's claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting April 1, 2021 and ending March 31, 2022. At the start of the tenancy, monthly rent was \$1,585 plus \$125 for two parking stalls (\$1,710 total). In December 2021, the landlord served the tenants with a Notice of Rent increase stating that monthly rent would be raised from \$1,710 to \$1,735.64 as of April 1, 2022. The tenants paid the landlord a security deposit of \$792.50, which the landlord continues to hold in trust for the tenants.

SD testified that the tenants did not pay any monthly rent on December 1, 2021. She testified that they paid \$825 in monthly rent on December 9, 2021. She testified that the tenants did not pay any rent on January 1, 2022, but paid \$1,060 on January 11, 2022, and a further \$825 on January 14, 2022.

On January 7, 2022 the landlord served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent (the "**Notice**") by posting it on the door of the rental unit. It specified an effective date of January 17, 2022. It listed the arrears owed as \$2,595. the tenants did not pay this amount within five days, or at all. They did not dispute the notice with the Residential Tenancy Branch (the "**RTB**").

SD testified that the tenants paid their rent on time for February 2022. She testified that they did not pay any amount of rent on March 1, 2022, but that they paid \$1,650 to the landlord towards March rent over two payments made in March (on March 8 and on March 31). She testified that the tenants did not pay any rent on April 1, 2022 (rent had by this time increased to \$1735.64). She testified that the tenants did not pay any rent when it was due on May 1, 2022. She testified the landlord received \$825 from the tenants on May 3, 2022.

The tenancy agreement permits the landlord to charge the tenant with NSF fees. It contains the following term:

If the rent or any other sum owing to the landlord is not honored at the financial institution upon which it is drawn, the tenant will pay the landlord, in respect of the dishonored payment, the dishonored payment charges charged to the landlord, plus the \$25 fee for late rent, in addition to the sum owing.

SD testified that the tenants provided the landlord with cheques which did not clear when the landlord attempted to cash them on: June 1, 2021; September 1, 2021; October 4, 2021; December 1, 2021; June 4, 2022; March 1, 2022; April 1, 2022; and May 2, 2022. as such, she argued that the tenants owe the landlord \$200 in NSF fees per the tenancy agreement.

In summary, SD testified that the tenant owed the landlord \$3,616.29, as follows:

Date	Owed	Paid	Balance	Description
2-Jun-21	\$25.00		\$25.00	NSF fee
2-Sep-21	\$25.00		\$50.00	NSF fee
4-Oct-21	\$25.00		\$75.00	NSF fee
1-Dec-21	\$1,710.00		\$1,785.00	Rent
1-Dec-21	\$25.00		\$1,810.00	NSF fee
9-Dec-21		\$825.00	\$985.00	Payment
1-Jan-22	\$1,710.00		\$2,695.00	Rent
4-Jan-22	\$25.00		\$2,720.00	NSF fee
11-Jan-22		\$1,060.00	\$1,660.00	Payment
14-Jan-22		\$825.00	\$835.00	Payment
1-Feb-22	\$1,710.00		\$2,545.00	Rent
1-Feb-22		\$1,710.00	\$835.00	Payment
1-Mar-22	\$1,710.00		\$2,545.00	Rent
1-Mar-22	\$25.00		\$2,570.00	NSF fee
8-Mar-22		\$825.00	\$1,745.00	Payment
31-Mar-22		\$825.00	\$920.00	Payment
1-Apr-22	\$1,735.64		\$2,655.64	Rent
1-Apr-22	\$25.00		\$2,680.64	NSF fee
1-May-22	\$1,735.64		\$4,416.28	Rent
2-May-22	\$25.00		\$4,441.28	NSF fee
3-May-22		\$825.00	\$3,616.28	Payment
Total			\$3,616.28	

Analysis

I accept the uncontroverted testimony of SD in its entirety. I find that the tenants were obligated to pay \$1,710 in monthly rent until April 1, 2022, when the rent was raised to

\$1735.64. I find that the tenants made rent payments on the dates and times as set out above. As such, I find that they were \$2,595 in rental arrears as of January 7, 2022.

I find that the tenancy agreement permitted the landlord to charge NSF Fees of \$25 each time the tenants provided the landlord with a form of payment which was not accepted by the bank (e.g., a cheque for a rent payment from an account with insufficient funds). I accept SD's testimony that the tenants did so on eight separate occasions during the tenancy.

Accordingly, I find that the tenants or breach of their tenancy agreement by failing to pay rent when it was due.

For the foregoing reasons, I find that the tenants owe the landlord \$3,616.28 for unpaid rent and NSF fees. I order them to pay the landlord this amount.

Section 46 of the Act, in part, states:

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*].

[...]

(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.

As such, the landlord was entitled to issue the Notice. I reviewed the notice and find that it complies with the form and content requirements set out at section 52 of the Act. The

tenants have neither paid the full amount of the arrears set out on the Notice nor did they dispute it within five days of receiving the Notice, or at all.

As such, the tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the notice (January 17, 2022).

Accordingly, the landlord is entitled to an order of possession.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenants.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenants pay the landlord \$2,923.79, representing the following:

Description	Amount
Rent Arrears	\$3,416.29
NSF Fees	\$200.00
Filing Fee	\$100.00
Security Deposit Credit	-\$792.50
Total	\$2,923.79

Pursuant to section 55 of the Act, I order that the tenants deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached order(s) by the landlord.

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 30, 2022

Residential Tenancy Branch