



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: CNR

Landlord: OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") to cancel a 10 Day Notice to End Tenancy for Unpaid Rent dated February 3, 2022 (the "10 Day Notice") pursuant to section 46 of the Act.

This hearing also dealt with the Landlord's cross-application pursuant to the Act for:

- an Order of Possession under the 10 Day Notice pursuant to sections 46 and 55;
- a Monetary Order of \$2,705.00 for unpaid rent and NSF fee pursuant to sections 26 and 67; and
- authorization to recover the filing fee for the Landlord's application from the Tenant pursuant to section 72 of the Act.

The Landlord's agent SL attended the hearing, and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 1:40 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord's agent SL and I were the only ones who had called into the hearing.

I advised SL that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibits unauthorized recordings of dispute resolution hearings. SL confirmed he was not recording this dispute resolution hearing.

Preliminary Matter – Dismissal of Tenant's Application

SL testified the Landlord did not receive any dispute resolution materials from the Tenant prior to this hearing. I find the Tenant did not serve the Landlord with the notice of dispute resolution proceeding package for the Tenant's application or any supporting documentary evidence in accordance with sections 88 and 89 of the Act.

In addition, rule 7.3 of the Rules of Procedure provides as follows:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party or dismiss the application with or without leave to reapply.

As the Tenant did not attend the hearing, and in the absence of any submissions or evidence, I order the Tenant's application dismissed without leave to reapply.

Preliminary Matter – Service of the Landlord's Dispute Resolution Materials

SL confirmed he served the Tenant with the notice of dispute resolution proceeding package and supporting documentary evidence for the Landlord's cross-application (collectively, the "Landlord's NDRP Package") by registered mail on February 15, 2022. The Landlord's submitted evidence includes a Canada Post registered mail receipt dated February 15, 2022, together with a tracking number. That Canada Post tracking number is referenced on the cover page of this decision. Based on the above, I find the Landlord has served the Tenant with the Landlord's NDRP Package in accordance with sections 88 and 89 of the Act. I further find that pursuant to section 90 of the Act, the Tenant is deemed to have received the Landlord's NDRP Package on February 20, 2022.

Preliminary Matter – Tenancy Has Ended

SL testified it was discovered on February 27, 2022 that the Tenant had vacated the rental unit, without notice and without providing a forwarding address. I accept SL's undisputed testimony and find that the tenancy ended, pursuant to section 44(1)(d) of the Act, on February 27, 2022.

As the Tenant is no longer in possession of the rental unit, I find the Landlord is not seeking for an Order of Possession to be granted at this time. Accordingly, the Landlord's claim for an Order of Possession pursuant to sections 46 and 55 of the Act is dismissed with leave to re-apply.

Issues to be Decided

1. Is the Landlord entitled to a Monetary Order of \$2,705.00 for unpaid rent and NSF fee, pursuant to sections 26 and 67 of the Act?
2. Is the Landlord entitled to recovery of the filing fee for the Landlord's application from the Tenant, pursuant to section 72 of the Act?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and 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 submitted a copy of the parties' tenancy agreement into evidence. The agreement indicates the following particulars of the tenancy, which were confirmed by SL during the hearing:

- The tenancy is for a fixed term commencing on November 20, 2021 and ending on November 30, 2022, to be continued on a month-to-month basis thereafter.
- Rent is \$2,680.00 per month payable on the first day of each month.
- The Tenant paid a security deposit of \$1,340.00, which amount is held by the Landlord.

A copy of the 10 Day Notice was also submitted into evidence. I have reviewed the 10 Day Notice and find that it complies with the requirements of section 52 of the Act in form and content.

SL confirmed he served the 10 Day Notice by posting it to the Tenant's door on February 3, 2022. The Landlord submitted a proof of service in form #RTB-34, which contains a signed witness statement. Based on the above, I find the Landlord served the Tenant with the 10 Day Notice in accordance with section 88(g) of the Act. I further find that pursuant to section 90(c) of the Act, the Tenant is deemed to have received the 10 Day Notice on February 6, 2022.

The Landlord submitted additional documentary evidence including:

- email and text message correspondence with the Tenant regarding non-payment of February 2022 rent and NSF charge; and
- a signed tenancy agreement addendum with an NSF charge provision.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Is the Landlord entitled to a Monetary Order for unpaid rent and NSF fee?

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

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In this case, I accept the Landlord's undisputed evidence and find that the Tenant did not pay rent to the Landlord when it was due on February 1, 2022, contrary to the parties' tenancy agreement and section 26(1) of the Act. The Tenant did not attend the hearing to present any evidence relating to a right under the Act to deduct all or a portion of the rent owing to the Landlord. As such, I allow the Landlord's claim of \$2,680.00 for unpaid February rent pursuant to section 67 of the Act.

Under section 7(1)(d) of the Residential Tenancy Regulation (the "Regulations"), a landlord may charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Section 7(2) of the

Regulations requires that a landlord must not charge such a fee unless the tenancy agreement provides for that fee.

I find that paragraph 1 of the parties' tenancy agreement addendum provides for a \$25.00 fee to be levied in the event of an NSF rental payment. I accept the Landlord's undisputed evidence that the Tenant's cheque for February 2022 rent was returned due to insufficient funds. Accordingly, I allow the Landlord's claim of \$25.00 for the NSF fee.

2. Is the Landlord entitled to recovery of the filing fee?

As the Landlord has been successful in this application, I grant the Landlord's claim for recovery of the \$100.00 filing fee under section 72(1) of the Act.

Pursuant to Section 72(2)(b) of the Act, I order that the Landlord is authorized to retain the \$1,340.00 security damage deposit held by the Landlord in partial satisfaction of the total amount awarded in this application.

The Monetary Order granted to the Landlord for the balance of the award is calculated as follows:

Item	Amount
February 2022 Rent	\$2,680.00
NSF Fee	\$25.00
Landlord's Filing Fee	\$100.00
Less Security Deposit	- \$1,340.00
Total Monetary Order for Landlord	\$1,465.00

Conclusion

The Tenant's application is dismissed without leave to re-apply.

I grant the Landlord a Monetary Order in the amount of \$1,465.00. The Landlord must serve the Order on the Tenant as soon as possible. Should the Tenant fail to comply with the Order, the Order may be filed in the Small Claims Division of the Provincial Court and be 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 17, 2022

Residential Tenancy Branch