



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPQ, OPR, MNDL, MNRL, 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;
- an order of possession for because the tenant does not qualify for a subsidized rental unit pursuant to section 55;
- a monetary order for unpaid rent and for damage to the rental unit in the amount of \$1,240.80 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:29 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. The landlord's property portfolio manager ("**LA**") 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 LA and I were the only ones who had called into the hearing.

LA testified she served that the tenant with the notice of dispute resolution package and supporting documentary evidence via registered mail on April 28, 2022. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with these documents on May 3, 2022, five days after LA mailed them, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment of Application

At the hearing, LA requested to amend the landlord's application to include a claim for May 2022 rent which she testified remains outstanding.

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 the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for May 2022 rent (\$544).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$1,784.80; and
- 3) recover the filing fee?

Background and Evidence

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

The parties entered into a written tenancy agreement starting Dec 22, 2017. Monthly rent is calculated based on the tenant's income, and is currently \$544, payable on the first of each month. The tenant was not required to pay a security deposit to the landlord.

LA testified that the tenant failed to submit or signed documents necessary for her to qualify for subsidized housing, despite numerous requests from the landlord for her to do so. As such, on January 19, 2022, the landlord posted a Two Month Notice to End Tenancy Because the Tenant Does Not Qualify For Subsidized Rental Unit (the "**Two Month Notice**") on the door of the rental unit. It specified an effective date of March 31, 2022. The tenant did not dispute this notice.

LA testified that the tenant made a rent payment of \$544 on February 16, 2022. She stated that \$288 of this amount was applied to February rent arrears, and the balance (\$256) was applied to March 2022's rent, when it became due. She testified that the tenant has not paid any further portion of March's rent, nor has she paid any part of April or May 2022's rent. LA testified that the tenant is currently \$1,376 in rent arrears, calculated as follows:

Date	Owed	Paid	Balance
15-Feb-22	\$288.00		\$288.00
16-Feb-22		\$544.00	-\$256.00
1-Mar-22	\$544.00		\$288.00
1-Apr-22	\$544.00		\$832.00
1-May-22	\$544.00		\$1,376.00
		Total	\$1,376.00

On March 10, 2022, the landlord served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent (the “**10 Day Notice**”) by regular mail. It listed arrears owed as \$288 and specified an effective date of March 25, 2022. The tenant did not pay any part of those arrears, nor did she dispute this notice within five days of receiving it, or at all.

Finally, LA testified that on June 26, 2021, the tenant punched the window on the back door of the rental unit, which caused it to become damaged and dislodged it from the door frame. The landlord submitted photographs of the damaged window and an “incident report” prepared contemporaneously in support of LA’s testimony. LA testified that it cost the landlord \$408.80 to replace the damaged window. The landlord submitted an invoice supporting this amount.

Analysis

I accept LA's undisputed testimony, in its entirety.

I find that the tenant was served with the 10 Day Notice and the Two Month Notice as set out above, and that the tenant did not dispute either of them.

I have reviewed both Notices and find that they comply with the section 52 form and content requirements.

Accordingly, pursuant to sections 46(5) and 49.1(6) of the Act, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective dates of the Notices.

As both effective dates have passed, the landlord is entitled to an order of possession effective two days from when it is served on the tenant.

I find that the tenant’s monthly rent is \$544, and that she is currently \$1,376 in rental arrears, having failed to pay part of March 2022’s rent, and all of April and May 2022’s rent. Accordingly, I order that she pay this amount to the landlord.

I find that the tenant, or someone she permitted on the residential property, damaged the window on the rear door of the rental unit. Based on LA's testimony, and the invoice

submitted into evidence, I find that the landlord incurred a cost of \$408.80 to repair this damage. I order that the tenant pay the landlord this amount.

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 tenant.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$1,884.80, representing the following:

Description	Amount
Arrears	\$1,376.00
Window replacement	\$408.80
Filing Fee	\$100.00
Total	\$1,884.80

Pursuant to section 55 of the Act, I order that the tenant 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 by the landlord.

I order the landlord to serve the tenant, in accordance with section 88 of the Act, copies of this decision and the attached orders, within three days of receiving it from the Residential Tenancy Branch.

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 31, 2022

Residential Tenancy Branch