



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On March 2, 2022 the landlord applied for:

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated February 11, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent, requesting to retain a security and/or pet damage deposit; and
- the filing fee.

The hearing was attended by the landlord and his representatives, but not the tenant. Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified they served the Notice of Dispute Resolution Proceeding (NDRP) and their evidence on the tenant by registered mail on March 11, 2022, and submitted a tracking number. Based on the landlord's undisputed testimony, and having checked the tracking number, I find the landlord served the tenant in accordance with section 89 of the Act, and deem the landlord's NDRP and evidence received by the tenant on March 16, 2022, in accordance with section 90 of the Act.

Issues to be Decided

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to a monetary order for unpaid rent?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began June 1, 2021; rent is \$2,250.00, due on the first of the month; and the tenant paid a security deposit of \$1,200.00, which the landlord still holds.

The landlord submitted as evidence a six-month fixed term tenancy agreement, ending May 31, 2021, which states that at the end of the fixed term the tenancy ends and the tenant must move out. The tenancy agreement names the subject tenant and another tenant. In their application, the landlord submitted that “this is the former tenancy agreement, involving the tenant and a previous tenant that moved out, after which the agreement was for the remaining tenant to pay the rent for the entire unit.” The tenancy agreement states that rent is \$2,250.00 a month.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The landlord testified the 10 Day Notice was served on the tenant by regular mail on February 13, 2022, and submitted a witnessed proof of service form as evidence. The landlord testified that they also made the tenant aware of the 10 Day Notice via WeChat, and that the application was the primary way the tenant and landlord had communicated. The landlord testified that to the best of their knowledge the tenant had not applied to dispute the Notice.

The reason indicated on page 2 of the 10 Day Notice is that the tenant has failed to pay rent in the amount of \$3,625.00, due on February 1, 2022.

The landlord testified that the tenant now owes unpaid rent as follows:

Month	Rent	Rent paid	Monthly outstanding
December 2021	\$2,250.00	\$1,125.00	\$1,125.00
January 2022	\$2,250.00	\$2,000.00	\$250.00
February 2022	\$2,250.00	\$0.00	\$2,250.00
March 2022	\$2,250.00	\$0.00	\$2,250.00
April 2022	\$2,250.00	\$0.00	\$2,250.00
May 2022	\$2,250.00	\$0.00	\$2,250.00
June 2022	\$2,250.00	\$0.00	\$2,250.00
Total			\$12,625.00

The landlord provided bank statements in support of their testimony on outstanding rent, noting that all the tenant's rent payments went into that account. The landlord also noted that the November 2021 statement reflects that tenant paid the landlord an additional \$100.00 to reimburse the landlord for a job the landlord had purchased on behalf of the tenant.

The landlord testified they are not sure if the tenant still resides in the rental unit.

Analysis

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find that the 10 Day Notice is deemed received by the tenant on February 18, 2022, five days after being mailed, in accordance with sections 88 and 90 of the Act.

I find that the landlord's 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the notice, states the reasons for ending the tenancy, and is in the approved form.

I find that the tenant has failed to file an application for dispute resolution within 5 days of February 18, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the 10 Day Notice, February 28, 2022, and must vacate the rental unit.

In accordance with section 55 of the Act, I find that the landlord is entitled to an order of possession and a monetary award for outstanding rent in the amount of \$12,625.00.

As the landlord testified they are not sure if the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, June 13, 2022.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain \$1,200.00 of the tenant's security deposit in partial satisfaction of the amount owing.

I find the landlord is entitled to a monetary order as follows:

Outstanding rent	\$12,625.00
Filing fee	\$100.00
Security deposit	-\$1,200.00
Owed to landlord	\$11,525.00

In closing, I bring the attention of the parties to [this page](#) from the Residential Tenancy Branch website, which notes that effective December 11, 2017, fixed term tenancy agreements can no longer include a clause requiring a tenant to move out at the end of the term unless:

- The tenancy agreement is a sublease agreement; or
- The tenancy is a fixed term tenancy in circumstances prescribed in [section 13.1](#) of the Residential Tenancy Regulation.

Conclusion

The landlord's application is granted.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant.

The landlord is granted a monetary order in the amount of \$11,525.00.

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: June 14, 2022

Residential Tenancy Branch