



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EVERGREEN LANDS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

On February 16, 2022, the Landlord made an Application for a Dispute Resolution Proceeding seeking an Order of Possession for Unpaid Rent based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This Application was subsequently scheduled to commence via teleconference at 9:30 AM on June 7, 2022.

G.B. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 10-minute teleconference. At the outset of the hearing, I informed G.B. that recording of the hearing was prohibited, and he was reminded to refrain from doing so. As well, he provided a solemn affirmation.

G.B. advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on March 17, 2022 (the registered mail tracking number is noted on the first page of this Decision). He stated that this package was refused by the Tenant and returned to sender. Based on this solemnly affirmed testimony and evidence, I am satisfied that the Tenant was deemed to have received the Notice of Hearing and evidence package 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?
- Is the Landlord entitled to recover the filing fee?

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.

G.B. advised that the tenancy originally started on December 1, 2020, and that the tenancy ended when the Tenant was physically evicted on April 19, 2022, by way of a Writ of Possession. Rent was established at an amount of \$1,776.25 per month and was due on the first day of each month. A security deposit of \$875.00 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 January 5, 2022. The Notice indicated that \$776.25 was owing for rent on January 1, 2022. The effective end date of the tenancy was noted as January 19, 2022.

He submitted that the Tenant paid rent for December 2021 in full, but also pre-paid \$1,000.00 in December 2021 towards January 2022 rent. However, the Tenant did not pay the balance of January 2022 rent on January 1, 2022. Thus, the Notice was served. As well, he advised that the Tenant did not pay any rent at all up until the day she was physically evicted.

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:

- January 2022 rent: \$776.25

- February 2022 rent: \$1,776.25
- March 2022 rent: \$1,776.25
- April 2022 rent: \$1,776.25

Total rental arrears: **\$6,105.00**

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. 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 Tenant was served the Notice on January 5, 2022, by being posted to the door. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities 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 the Notice was served on January 5, 2022, by being posted to the door, the Notice was deemed received on January 8, 2022. As such, the Tenant must have paid the rent in full or disputed the Notice by January 13, 2022, at the latest. The undisputed evidence is that the Tenant did not pay the rent and did not dispute the Notice. As there is no evidence that the Tenant had a valid reason under the *Act* for withholding 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*, and as the Tenant has not complied with the *Act*, 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 been physically evicted from 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 **\$6,105.00** for the outstanding rental arrears.

As the Landlord was successful in these claims, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application. G.B. advised that he did not want to apply the security deposit towards the rental arrears, and wished to claim against that security deposit, in future, for other damages owing.

Pursuant to Sections 67 and 72 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 January 2022	\$776.25
Rental arrears for February 2022	\$1,776.25
Rental arrears for March 2022	\$1,776.25
Rental arrears for March 2022	\$1,776.25
Filing fee	\$100.00
Total Monetary Award	\$6,205.00

Conclusion

The Landlord is provided with a Monetary Order in the amount of **\$6,205.00** 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: June 7, 2022

Residential Tenancy Branch