



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, FFT, OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On March 7, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On March 15, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 46 of the *Act*, seeking a Monetary Order for the unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Landlord attended the hearing; however, neither Tenant attended the hearing at any point during the 33-minute teleconference. At the outset of the hearing, I informed the Landlord that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

This hearing was scheduled to commence via teleconference at 11:00 AM on June 21, 2022.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 11:00 AM and monitored the teleconference until 11:33 AM. Only the Landlord dialed into the teleconference during this time. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of

Hearing. I also confirmed from the teleconference system that the only other person who had called into this teleconference was the Landlord.

As the Tenants did not attend the hearing, their Application has been dismissed without leave to reapply.

The Landlord advised that she served each Tenant with a separate Notice of Hearing and evidence package on March 22, 2022 (the registered mail tracking numbers are noted on the first page of this Decision). She stated that these packages were returned to sender. Based on this undisputed evidence, I am satisfied that the Tenants have been duly served the Landlord's Notice of Hearing and evidence packages. 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.

The Landlord advised that the tenancy started on October 1, 2021, that rent was established at an amount of \$2,400.00 per month, and that it was due on the first day of each month. However, she indicated that as of November 1, 2021, she reduced the Tenants' rent to \$2,100.00 per month. A security deposit of \$1,200.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served to the Tenants by posting it to their door on March 3, 2022. The Notice indicated that \$2,100.00 was owing for rent and that it was due on March 1, 2022. The effective end date of the tenancy was noted as March 13, 2022.

Also included on the Notice was an amount of \$417.44 owing for utilities. However, as the Landlord indicated that the written demand for utilities was given on March 1, 2022, serving this Notice for unpaid utilities was premature and did not comply with Section 46 of the *Act*. As such, the utilities owing will not be considered in this Decision and the Landlord was advised that she must make a separate Application against the Tenants to recover any amount of utilities owing.

The Landlord advised that the Tenants would always pay their rent by electronic transfer, but they did not pay any rent on March 1, 2022. Thus, the Notice was served. She stated that the Tenants then paid \$1,050.00 on March 15, 2022, and then paid \$1,050.00 on March 25, 2022. Despite the Tenants paying this rent late, and not in accordance with the timeframe requirements of Section 46 to cancel the Notice, the Tenants have paid all of March 2022 rent in full. She submitted that the Tenants paid April rent in full as well, but did not pay any rent for May 2022. In addition, she testified that the Tenants owed \$1,050.00 for October 2021 rental arrears.

She also advised that she sold the rental unit to a new owner effective for June 1, 2022, and that the security deposit has been transferred, along with this tenancy, to the new owner. As such, she is not seeking an Order of Possession of the rental unit, but is simply seeking a Monetary Order for the rental arrears that are owed to her.

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.

As the Tenants' Application was dismissed in its entirety, I find that the Tenants are not entitled to recover the filing fee. Furthermore, as the Landlord is not seeking an Order of Possession of the rental unit, the only issue to consider in this Decision is that of the unpaid rent.

Section 26 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants 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 or Utilities. Once this Notice is received, the Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants 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 Notice was served to the Tenants by being posted to their door on March 3, 2022. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent 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 this Notice was served by being posted to the door on March 3, 2022, it would have been deemed received on March 6, 2022. As such, the Tenants must have paid the rent in full or disputed the Notice by March 11, 2022 at the latest. However, the undisputed evidence is that the Tenants had not paid the rent in full by this date to cancel the Notice. While the Tenants did dispute the Notice, there was no evidence submitted to support that they had a valid reason, or any authority under the *Act*, for withholding the rent. Regardless, as they did not attend the hearing, their Application was dismissed in its entirety.

Based on the consistent, undisputed evidence before me, I am satisfied that the Tenants did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenants did not pay the rent in full by March 11, 2022, and as they had no

authority to withhold the rent, I am satisfied that the Tenants breached the *Act* and jeopardized their 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*, as the Tenants have not complied with the *Act*, and as the Tenants' Application was dismissed in its entirety, 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 Landlord has sold the property and is no longer seeking an Order of Possession, it is not necessary to grant one to the Landlord.

However, 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 **\$3,150.00** 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.

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 Tenants to the Landlord

Item	Amount
Rental arrears for October 2021	\$1,050.00
Rental arrears for May 2022	\$2,100.00
Filing fee	\$100.00
Total Monetary Award	\$3,250.00

Conclusion

Based on the above, the Tenants' Application is dismissed without leave to reapply.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$3,250.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 21, 2022

Residential Tenancy Branch