



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant: CNR-MT, RR, RP, OLC, FFT
Landlord: OPR-DR, MNRL, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear two crossed applications regarding a residential tenancy dispute.

On March 11, 2022, the tenant applied for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, noting he required more time to dispute the notice;
- an order to reduce the rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs made to the unit or property, having contacted the landlord in writing;
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement; and
- the filing fee.

On March 16, 2022, the landlord applied for:

- an order of possession, having served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 10, 2022 (the 10 Day Notice); and
- the filing fee.

On June 3, 2022, the landlord amended their application to apply for:

- a monetary order for \$11,500.00 for unpaid rent.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The tenant testified that he served the Notice of Dispute Resolution Proceeding (NDRP) and his evidence on the landlord by email within a few days of receiving the NDRP from the Residential Tenancy Branch (RTB). The landlord testified that she did not provide the tenant with an email address for service, and that she did not receive the tenant's documents. Section 43(2) of the *Residential Tenancy Regulation* (the Regulation) allows an application to be served on a person by emailing a copy to an email address provided as an address for service by the person.

As the landlord did not provide the tenant with an email address for the purpose of service, and did not receive the tenant's documents, I find that the tenant did not serve his application on the landlord in accordance with section 89 of the Act.

As the landlord declined to waive their right to be served the tenant's application, I dismiss the tenant's application with leave to reapply. Leave to reapply is not an extension of any applicable limitation period. The remainder of the decision will consider only the landlord's application.

The landlord testified she served her NDRP and evidence on the tenant by posting it to the door on March 24, 2022, and the tenant confirmed receipt of the landlord's documents. I find the landlord served the NDRP and her March 24, 2022 evidence on the tenant in accordance with section 89 of the Act.

The landlord uploaded additional evidence to the RTB on June 17, 2022 and submitted a proof of service form indicating the evidence was served on the tenant on June 17, 2022. I note that the deadline for the landlord to submit evidence regarding their application was June 5, 2022, and that Rule 3.14 provides that evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch (RTB) not less than 14 days before the hearing. As the landlord's June 17, 2022 evidence was not received by the tenant and the RTB in accordance with the Rules of Procedure, I have not considered it in my decision.

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

While I have considered all the evidence before me that met the Rules of Procedure, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my related findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began July 1, 2021; rent is \$2,500.00 per month, except when the pool is running, when rent increases to \$2,700.00. Rent is due on the first of the month, and the tenant paid a security deposit of \$1,250.00, which the landlord still holds.

The tenant testified he still resides in the rental unit.

The landlord testified the 10 Day Notice was served on the tenant in person on February 10, 2022, and the tenant confirmed receiving the Notice as described.

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 reason indicated on page 2 of the 10 Day Notice is that the tenant has failed to pay rent in the amount of \$1,500.00, due on February 1, 2022.

The landlord testified the pool became operational in May 2022.

The landlord testified that the tenant now owes unpaid rent as follows, including the \$200.00 pool increase for May and June 2022:

Month	Rent	Rent paid	Monthly outstanding
February 2022	\$2,500.00	\$1,000.00	\$1,500.00
March 2022	\$2,500.00	\$0.00	\$2,500.00
April 2022	\$2,500.00	\$2,500.00	\$0.00
May 2022	\$2,700.00	\$0.00	\$2,700.00
June 2022	\$2,700.00	\$0.00	\$2,700.00
Total			\$9,400.00

I note that the landlord's June 3, 2022 Monetary Order Worksheet stated that the tenant had not paid any rent since February, but in the hearing, the landlord and tenant agreed that the tenant paid the April 2022 rent in full.

The landlord did not submit a tenant ledger as evidence.

The tenant agreed that he did not pay rent for June 2022. The tenant testified that he paid rent in full every month except for June 2022, and that the pool did not open until June 1, 2022.

The tenant testified that the landlord said he paid rent in April 2022 because the receipt the landlord gave the tenant for that month was the only receipt the tenant has received from the landlord.

The tenant testified that sometimes he is supposed to pay rent to the landlord, sometimes to the owner, and sometimes to the owner's uncle. The tenant testified that half the time they want cash, and half the time they want payment via another payment method.

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 the landlord served the 10 Day Notice on the tenant in person on February 10, 2022, in accordance with section 88 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 10, 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 ends on the effective date of the 10 Day Notice, February 20, 2022, and must vacate the rental unit.

In accordance with section 46 of the Act, I find the landlord is entitled to an order of possession.

As the tenant testified that he 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 20, 2022.

Section 55(4)(b) of the Act provides that an arbitrator may grant an order requiring payment of unpaid rent if an application is in relation to unpaid rent, and a tenant has not disputed a notice to end tenancy by making an application for dispute resolution and the time for making that application has expired.

The tenant testified that he paid rent in full each month, except for June 2022; the landlord testified that from February 2022 to June 2022, April was the only month in which the tenant paid rent in full.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, pursuant to Rule 6.6, the onus is on the landlord to prove their claim.

The landlord has provided conflicting evidence regarding the amount of rent owed by the tenant, and did not provide a tenant ledger as evidence. I find the landlord has failed to support their claim that the tenant owes \$9,400.00 in unpaid rent.

The parties agreed that the tenant did not pay rent for June 2022.

Therefore, as the parties agreed the pool was open as of June 1, 2022, and that rent is \$2,700.00 when the pool is open, I find the landlord is entitled to a monetary award for \$2,700.00 for the June 2022 rent, in accordance with section 55(4) of the Act.

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 partially 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 \$1,250.00 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	\$2,700.00
Filing fee	\$100.00
Deposit	-\$1,250.00
Owed to landlord	\$1,550.00

In closing, I bring the parties' attention to section 26(2) of the Act, which states a landlord must provide a tenant with a receipt for rent paid in cash.

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 \$1,550.00.

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 28, 2022

Residential Tenancy Branch