



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, OPR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$10,200 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 9:43 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlord's agents (JG and AG) 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 JG, AG, and I were the only ones who had called into the hearing.

JG testified he served that the tenant with the notice of dispute resolution package and supporting documentary evidence via registered mail on March 10, 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 March 15, 2022, five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment

At the hearing, JG sought to amend the landlord's application to include a claim for April, May, and June 2022 rent which he 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 he 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 April, May, and June 2022 rent (\$4,800).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$15,000;
- 3) recover the filing fee; and
- 4) retain the security and pet damage deposits in partial satisfaction of the monetary orders made?

Background and Evidence

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

The parties entered into an oral tenancy agreement starting February 1, 2021. Monthly rent is \$1,600. The landlord provided e-transfer receipts showing payments of rent in this amount for several months, as proof of the amount of rent owing. JG testified that the tenant paid the landlord a security deposit of \$800 and a pet damage deposit of \$800, both of which the landlord holds in trust for the tenant.

JG testified that the tenant has not paid any rent since October 2021. Additionally, he testified that the tenant only paid \$1,000 of rent for September 2021. Accordingly, the tenant is currently \$15,000 in rental arrears ($\$1,600 \times 9 \text{ months} = \$14,400$; $\$14,400 + \$600 = \$15,000$).

On February 3, 2022, the landlord posted a 10-Day Notice to End Tenancy for Non-Payment of Rent (the "**Notice**") on the door of the rental unit. It specified an effective date of February 13, 2022. It stated that as of February 2, 2022, the tenant owed the

landlord \$8,500 in rental arrears. The landlord submitted a proof of service document to confirming service of the Notice.

JG testified that the landlord made a slight error when calculating these arrears, and the tenant actually owed \$8,600 on the date the Notice was issued.

The tenant did not pay any portion of the arrears set out on the Notice or dispute the Notice within five days of being served with it, or at all.

JG testified that he has confirmed that the tenant still resides in the rental unit.

Analysis

I accept JG's testimony, supported by the e-transfer slips, that the oral tenancy agreement between the parties required the tenant to pay monthly rent of \$1,600. I also accept his testimony that the tenant only paid \$1,000 in rent in September 2021 and that he has not paid any rent since then. I find that the tenant is currently \$15,000 in rental arrears.

Section 26(1) of the Act requires tenants to pay rent when it is due under the tenancy agreement. The tenant did not do this. As such, I order that the tenant pay the landlord the full amount of arrears owed (\$15,000).

Based on JG's testimony, supported by the proof of service document, I find that the landlord served the tenant with the notice on February 3, 2022, by posting it on the door of the rental unit. The tenant has not disputed the notice within five days of being served with it, or at all.

Section 46 of the Act states:

Landlord's notice: non-payment of rent

46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

[...]

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) 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

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed the Notice and find that it meets the form and content requirements set out at section 52 of the Act. If I am incorrect, and the \$100 discrepancy between the amount of rent owed and amount set out on the Notice causes it to not comply with this section, I find it appropriate to amend the Notice pursuant to section 68(1) of the Act. In light of the minor arithmetical calculation (in comparison to the amount owed), the amendment would be reasonable in the circumstance. I also find that the tenant could have reasonably known the actual amount of rent owed, by making a simple calculation of the amounts of rent he paid.

Since the tenant did not dispute the Notice or pay the rental arrears, I find that he is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Accordingly, I grant the landlord an order of possession effective two days after it is served on the tenant.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, he may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit and pet damage deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the tenant pay the landlord \$13,500, representing the following:

Description	Amount
Arrears (September 2021 to June 2022)	\$15,000.00
Filing Fee	\$100.00
Credit for Security and Pet Damage Deposits	-\$1,600.00
Total	\$13,500.00

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(s) by the landlord.

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 17, 2022

Residential Tenancy Branch