



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, MNRT, RR, RP, OLC, FFT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- a Monetary Order for the cost of emergency repairs, pursuant to section 33;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an Order to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:24 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. The landlord and the landlord's wife/interpreter attended the hearing and were 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 Hearing. I also confirmed from the teleconference system that the landlord, the landlord's wife and I were the only ones who had called into this teleconference.

The landlord was advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. The landlord testified that they are not recording this dispute resolution hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord confirmed their email address for service of this decision.

Rule 7 of the Residential Tenancy Branch Rules of Procedure provides in part as follows:

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The tenant failed to attend this hearing. Pursuant to Rule 7 of the Residential Tenancy Branch Rules of Procedure, I dismiss the tenant's application without leave to reapply.

Section 55(1) and section 55(1.1) of the *Act* states that if the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice, the director must grant the landlord an order of possession and an order requiring the payment of the unpaid rent.

The landlord testified that the tenant moved out on March 18, 2022. As this tenancy has already ended, I find that I do not need to consider if the landlord is entitled to an Order of Possession because the issue is moot.

Issue

1. Is the landlord entitled to a Monetary Order for unpaid rent?

Background/Evidence

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

The landlord testified that this tenancy started in July of 2021 and ended on March 18, 2022. Monthly rent in the amount of \$1,250.00 was payable on the first day of each month. A security deposit of \$625.00 was paid by the tenant to the landlord. The landlord testified that no forwarding address was provided by the tenant.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was posted on the tenant's door on February 22, 2022. The tenant's application for dispute resolution states that the Notice was received by the tenant on February 22, 2022.

The Notice was not entered into evidence. The landlord and the landlord's wife testified that the Notice:

- was signed and dated by the landlord,
- gives the address of the rental unit,
- states the effective date of the Notice as March 3, 2022,
- states that the tenant failed to pay \$1,250.00 that was due on February 1, 2022, and
- is on Residential Tenancy Branch form 30.

The landlord testified that the tenant has not paid any rent since the Notice was served. The landlord testified that he is seeking rent for February and March 2022 totalling \$2,500.00.

Analysis

Based on the undisputed testimony of the landlord and the landlord's wife, and the tenant's application for dispute resolution, I find that the tenant was served with the Notice on February 22, 2022 via posting, in accordance with section 88 of the *Act*.

Section 55(1) and section 55(1.1) of the *Act* state:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

I accept the undisputed testimony of the landlord and the landlord's wife on the content of the Notice. Based on the undisputed testimony of the landlord and the landlord's wife, I find that the Notice meets the form and content requirements of section 52 of the *Act* because the Notice:

- is signed and dated by the landlord,
- gives the address of the rental unit,
- states the effective date of the notice,
- states the grounds for ending the tenancy, and
- is in the approved form.

Since I have dismissed the tenant's application and found that the Notice meets the form and content requirements of section 52 of the *Act*, the landlord is entitled to a Monetary Order for unpaid rent pursuant to section 55(1.1) of the *Act*.

Residential Tenancy Policy Guideline #3 states that unpaid rent is money that is due and owing during the tenancy and that under section 55(1.1) of the *Act*, the landlord is only eligible to recover rent due and payable during the tenancy.

Based on the landlord's undisputed testimony, I find that this tenancy ended on March 18, 2022 when the tenant moved out. I accept the landlord's undisputed testimony that the tenant has not paid any rent for February or March 2022.

I find that the landlord is entitled to collect February's rent in the amount of \$1,250.00 and per diem rent for March 1-18, 2022 pursuant to the following calculation:

$$\text{\$1,250.00 (rent) / 31 (days in March 2022) = \$40.32 * 18 (days tenancy ongoing in March 2022) = \$725.76.}$$

If the landlord suffers or has suffered further loss for the month of March 2022 or other months, such as loss of rental income, the landlord is at liberty to file an application for dispute resolution seeking such damages. As stated above, under section 55(1.1) of the *Act*, I am only at liberty to provide a Monetary Order for unpaid rent, not other forms of damages such as loss of rental income. As the tenancy ended on March 18, 2022, that was the last date that rent was incurred.

I accept the landlord's undisputed testimony that the tenant did not provide a forwarding address.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain the tenant's entire security deposit in the amount of \$625.00 in part satisfaction of the landlord's monetary claim.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
February 2022 rent	\$1,250.00
March 2022 rent	\$725.76
Less security deposit	-\$625.00
TOTAL	\$1,350.76

The landlord is provided with this Order 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 06, 2022

Residential Tenancy Branch