



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL-S, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26;
- an authorization to retain the security deposit (the deposit), under section 38; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:10 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord and agent CM attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness IT also attended. 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, her agent and witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this 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 \$5,000.00."

I accept the landlord's testimony that the tenant was served with the application and evidence (the materials) by registered mail on March 25, 2022, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision). The landlord mailed the package to the rental unit.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the materials on March 30, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

Preliminary Issue – Amendment of the monetary claim

At the hearing the landlord sought to amend her application for \$10,700.00 in unpaid rent to include an additional \$3,600.00 for the unpaid rent for April, May and June 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$14,300.00.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. a monetary order for unpaid rent?
3. an authorization to retain the deposit?
4. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord purchased the rental unit on June 14, 2021 and the tenancy started prior to that date. Monthly rent is \$1,300.00, due on the fifteenth day of the month. The landlord collected and holds in trust a deposit of \$650.00.

The landlord submitted a contract of purchase and sale. It states:

- (a) the property is subject to a tenancy agreement under the Residential Tenancy Act;
- (b) the monthly rent is \$1,300.00 per month;
- (d) the monthly rent is due on the 15th day of each month;
- (e) a security deposit of was paid by the tenant on May 12, 2021; and

The landlord affirmed the tenant has not paid rent since August 15, 2021.

The landlord is claiming an order of possession and a monetary order for the unpaid rent of August, September, October, November and December 2021, January, February, March, April, May and June 2022 in the amount of \$14,300.00.

The landlord stated she served the Notice in February 2022. Later the landlord testified she attached the notice to the rental unit's front door in February or in March 2022, sent it by registered mail and left a copy in the tenant's mailbox. The landlord does not know the tracking number.

CM said she does not know when the landlord served the Notice. Later CM affirmed the landlord attached the Notice to the rental unit's front door on February 10, 2022.

Witness IT stated she is a building manager. IT testified the landlord served three or four ten day notices to end tenancy and she observed the landlord attaching the notices to the rental unit's front door and leaving a copy of the notices in the tenant's mailbox.

The landlord submitted an incomplete copy of the Notice containing only the first page. The Notice is dated February 10, 2022.

The landlord said the tenant has not disputed the Notice and continues to occupy the rental unit.

The landlord submitted into evidence a direct request worksheet.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Order of possession

The testimony offered by the landlord, agent CM and witness IT was vague and non convincing. The parties did not provide a tracking number for the registered mail package.

Based on the vague testimony, I find the landlord failed to prove, on a balance of probabilities, that she served the Notice in accordance with section 88 of the Act.

Section 55(2)(b) of the Act states:

(2)A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

[...]

(b)a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Per section 55(2)(b), I dismiss the landlord's claim for an order of possession, as the landlord failed to prove that she served the Notice. The landlord is at liberty to serve a new Notice.

Furthermore, the landlord only submitted into evidence an incomplete copy of the Notice.

Unpaid rent

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

I accept the landlord's uncontested convincing testimony and the contract of purchase and sale indicating that monthly rent is \$1,300.00 due on the fifteenth day of the month. I accept the landlord's uncontested convincing testimony that the tenant did not pay rent in August, September, October, November and December 2021, January, February, March, April, May and June 2022.

Based on the landlord's undisputed testimony and the direct request worksheet, I find the tenant did not pay rent for August, September, October, November and December 2021, January, February, March, April, May and June 2022 and is in arrears in the amount of \$14,300.00 (\$1,300 per month x 11 months).

Per section 26 of the Act, I award the landlord unpaid rent in the amount of \$14,300.00.

Filing fee and deposit

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$650.00 deposit in partial satisfaction of the monetary award.

In summary:

Unpaid rent (\$1,300.00 x 11 months)	\$14,300.00
Filing fee	\$100.00
Subtotal	\$14,400.00
Deposit	\$650.00
Monetary award	\$13,750.00

Conclusion

I dismiss the landlord's claim for an order of possession without leave to reapply.

Pursuant to sections 26 and 72 of the Act, I authorize the landlord to retain the \$650.00 deposit and grant the landlord a monetary order in the amount of \$13,750.00.

The landlord is provided with this order in the above terms and the tenant must be served with this order. 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: July 12, 2022

Residential Tenancy Branch