



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the landlord applied on April 25, 2022 for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated March 16, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent, having issued the 10 Day Notice; and
- the filing fee.

The hearing started promptly at 11:00 a.m., and only the landlord was present. She was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; she was made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified that the Notice of Dispute Resolution Proceeding and her evidence was served on each of the tenants on May 25, 2022 by registered mail, and provided tracking numbers, as noted on the cover page of this decision. I find the landlord's documents served on the tenants in accordance with section 89 of the Act, and deem the documents received by the tenants on May 30, 2022, in accordance with section 90 of the Act.

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 and/or utilities?
- 3) Is the Landlord entitled to the filing fee?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began September 15, 2021; rent is \$3,500.00 a month, due on the first of the month; and the tenants paid a security deposit of \$1,750.00, which the landlord still holds.

A copy of the tenancy agreement is submitted as evidence.

A copy of the 10 Day Notice was submitted as evidence. The landlord testified that the Notice was served on the tenants on March 16, 2022 by posting it to the door. Photos and a witnessed proof of service form are submitted in support.

The 10 Day Notice is signed and dated by the Landlord, states an effective date, states the reason for ending the tenancy, and is in the approved form.

The 10 Day Notice indicates the tenancy is ending because the tenants failed to pay rent in the amount of \$1,652.00, due on March 1, 2022. The Notice also lists an amount owing for utilities, but the landlord testified she is not seeking outstanding utilities.

The Direct Request Worksheet (DRW) submitted as evidence indicates rent is outstanding as follows:

Month	Balance rent owed
February 2022	\$79.00
March 2022	\$1,506.00
April 2022	\$1,879.00

During the hearing, the landlord provided conflicting testimony regarding the amount of rent paid and owing, as follows:

Month	Monthly rent	Rent paid	Balance rent owed
February 2022	\$3,500.00	Landlord stated \$1,848.00, then stated \$3,421.00	\$79.00
March 2022	\$3,500.00	\$1,848.00	\$1,652.00 (DRW states \$1,506.00)
April 2022	\$3,500.00	Not available	(DRW states \$1,879.00)
May 2022	\$3,500.00	\$1,750.00	\$1,750.00

June 2022	\$3,500.00	\$1,750.00	\$1,750.00
July 2022	\$3,500.00	\$1,750.00	\$1,750.00

When asked about the rent paid and owing for April 2022, the landlord stated she did not have the information at hand, and would need to check with her bank.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Having reviewed the relevant testimony and evidence, on a balance of probabilities, I make the following findings.

I find that the tenancy agreement requires the tenants to pay the landlord rent of \$3,500.00 each month.

I find the landlord served the 10 Day Notice in accordance with section 88 of the Act. I find that the 10 Day Notice meets the form and content requirements of section 52.

I accept the landlord's undisputed affirmed testimony that, beginning in February 2022, the tenants have failed to pay rent in full each month. Therefore, I find that the Landlord is entitled to an order of possession.

The landlord has provided conflicting and incomplete evidence regarding the amount of rent outstanding, and did not submit a tenant ledger as evidence. I find the landlord's evidence on rent not credible, and that she has provided insufficient evidence to support her claim for monetary compensation. Therefore, I dismiss the claim for a monetary order for unpaid rent.

I make no finding regarding the amount of rent owed to the landlord by the tenants, and the landlord is at liberty to make a new application for rent owed to them by the tenants.

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 her application, I order the tenants 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 \$100.00 of the tenants' \$1,750.00 security deposit in satisfaction of the amount owing.

Conclusion

The landlord is granted an order of possession which will be effective two days after it is served on the tenants.

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 25, 2022

Residential Tenancy Branch