



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPU, MNRL-S, MNDCL-S, FFL

Introduction

On April 25, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 9:30 AM on August 25, 2022.

K.M. attended the hearing as an agent for the Landlord; however, the Tenant did not make an appearance at any point during the 14-minute teleconference. At the outset of the hearing, I informed K.M. that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

She advised that the Tenant was served with the Notice of Hearing and evidence package by registered mail on May 6, 2022, and that the package was returned to sender on May 31, 2022 (the registered mail tracking number is noted on the first page of this Decision). Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that this package was sufficiently served to the Tenant. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

K.M. advised that the tenancy started on November 1, 2020, and that the tenancy ended when the Landlord received vacant possession on July 5, 2022. She stated that rent was currently established in the amount of \$1,218.00 per month and that it was due on the first day of each month. A security deposit of \$600.00 and a pet damage deposit of \$600.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She testified that the Notice was served to the Tenant by being posted to his door on April 8, 2022. The Notice indicated that \$1,236.00 was owing for rent on April 1, 2022. As well, \$212.05 was also owing for utilities after a written demand was provided to the Tenant on February 2, 2022. The effective end date of the tenancy was noted as April 16, 2022, on the Notice.

She submitted that the Tenant's rent was increased to \$1,218.00, effective for February 1, 2022, as per the notice of rent increase form provided as documentary evidence. She stated that the Tenant did not pay \$18.00 from March 2022 rent, and also did not pay April 2022 rent. She referenced the Tenant's rent ledger, submitted as documentary evidence, to support this position. She noted that the Tenant has not paid any rent since service of this Notice.

As well, she advised that the tenancy agreement required the Tenant to pay 50% of the utilities and that he was in arrears for this since October 16, 2021. She referenced the utility bills and the February 2, 2022 demand letter to support this position. Moreover, she stated that the Landlord is seeking compensation in the amount of **\$42.41**, for the cost of further outstanding utilities.

In addition to the above claims for monetary compensation, she advised that the Landlord is seeking compensation in the amount of **\$75.00**, which is calculated as the NSF fees for December 2021 rent, and for March and April 2022 rent.

Finally, on the Landlord's monetary order worksheet, she indicated that the Landlord is seeking compensation in the amount of **\$155.93** for the cost of a furnace service.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. The Landlord may also serve this Notice if the tenancy agreement requires the Tenant to pay utilities, and these remain unpaid more than 30 days after the Tenant is given a written demand for payment. Once this Notice is received, the Tenant would have five days to pay the rent and utilities in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing the Notice, I am satisfied that it was a valid Notice.

The undisputed evidence before me is that the Notice was served on April 6, 2022, by being posted to the door. According to Section 46(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the*

effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”

As the Notice was deemed received on April 9, 2022, the Tenant must have paid the rent and utilities in full or disputed the Notice by April 14, 2022, at the latest. However, the undisputed evidence is that the Tenant did not pay the rent and utilities in full or dispute the Notice by this date to cancel it. As the Tenant did not have a valid reason under the *Act* for withholding the rent and utilities, I am satisfied that he breached the *Act* and jeopardized his tenancy.

As the Landlord’s Notice for unpaid rent and utilities is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent and utilities pursuant to Sections 46 and 55 of the *Act*. However, as the Tenant has already given up vacant possession of the rental unit, it is not necessary to grant the Landlord an Order of Possession.

Moreover, regarding the Landlord’s claims for monetary compensation, I accept all of the Landlord’s claims for unpaid rent and utilities. Based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$4,119.46** for the claims pertaining to outstanding rent and utility arrears. However, as this was a hearing regarding non-payment of rent and utilities, the Landlord’s claim for the furnace service charge of \$155.93 is dismissed with leave to reapply.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit and pet damage deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenants to the Landlord

Item	Amount
Rental arrears for March 2022	\$18.00
Rental arrears for April 2022	\$1,218.00
Rental arrears for May 2022	\$1,218.00

Rental arrears for June 2022	\$1,218.00
Rental arrears for July 2022	\$1,218.00
NSF fees for December 2021, & March and April 2022	\$75.00
Utilities	\$212.05
Additional utilities	\$42.41
Filing fee	\$100.00
Security deposit	-\$600.00
Pet damage deposit	-\$600.00
Total Monetary Award	\$4,119.46

Conclusion

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$4,119.46** 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: August 25, 2022

Residential Tenancy Branch