



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR-DR, MNR-DR, FFL
Tenant: CNR, OLC

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear six crossed applications regarding a residential tenancy dispute.

The tenant applied on April 10, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 7, 2022.

The landlord applied on May 4, 2022 for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated April 7, 2022;
- a monetary order for unpaid rent, having served the Notice; and
- recovery of the filing fee.

The tenant applied on May 8, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, dated May 3, 2022.

The landlord applied on May 19, 2022 for:

- an order of possession, having issued four 10 Day Notices to End Tenancy for Unpaid Rent, dated January 3, 2022; February 2, 2022; April 7, 2022; and May 3, 2022;
- a monetary order for unpaid rent, having served the Notices; and
- recovery of the filing fee.

The tenant applied on June 8, 2022 for:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent, dated June 3, 2022 (the June 10 Day Notice); and
- an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

The landlord applied on June 10, 2022 for:

- an order of possession, having issued two 10 Day Notices to End Tenancy for Unpaid Rent, one dated May 3, 2022, the other dated July 4, 2022 (the July 10 Day Notice);
- a monetary order for unpaid rent, having served the Notices; and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding the service of the respective Notices of Dispute Resolution Proceeding; I instructed the parties to advise me if a piece of evidence was referred to they did not have.

Preliminary Matter

Rule of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenant's application for an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the 10 Day Notice?
- 2) Is the landlord entitled to an order of possession?
- 3) Is the landlord entitled to a monetary order for unpaid rent?
- 4) Is the tenant entitled to the filing fee?
- 5) Is the landlord entitled to the filing fee?

Background and Evidence

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

The parties agreed on the following particulars regarding the tenancy. It began January 1, 2022; rent is \$1,805.00, due on the first of the month; and the tenant paid a security deposit of \$902.50 and a pet damage deposit of \$902.50, which the landlord still holds.

A copy of the July 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$1,805.00 due on July 4, 2022. The landlord clarified the date of July 4 was a typographical error, and that the Notice should have indicated that rent was due on July 1, 2022.

The landlord testified they served the July 10 Day Notice on the tenant by posting it to the door on July 4, 2022, and submitted a witnessed proof of service form as evidence. Landlord's agent PS affirmed he served the Notice, and NV affirmed witnessing the service of the Notice. The tenant testified she did not receive the July 10 Day Notice and did not dispute it.

The landlord testified that the tenant owes outstanding rent as follows:

Month	Rent	Rent paid	Monthly outstanding	Cumulative total
March 2022	-	-	-\$45.00	-\$45.00
April 2022	\$1,805.00	\$0.00	\$1,805.00	\$1,760.00
May 2022	\$1,805.00	\$0.00	\$1,805.00	\$3,565.00
June 2022	\$1,805.00	\$0.00	\$1,805.00	\$5,370.00
July 2022	\$1,805.00	\$0.00	\$1,805.00	\$7,175.00
August 2022	\$1,805.00	\$0.00	\$1,805.00	\$8,980.00

The cumulative total amounts in the table above are calculated based on the landlord's testimony on rent payments.

The 10 Day Notices for April, May, and June 2022 indicate outstanding rent as follows:

- the Notice dated April 7 indicates \$1,805.00 owing;
- the Notice dated May 3 indicates \$3,610.00 owing; and
- the Notice dated June 3 indicates \$5,370.00 owing.

The landlord referred me to a copy of their banking records, submitted as evidence. The tenant testified she did not receive a copy of the document, and the landlord did not provide proof this document was included in those served on the tenant. Therefore, I advised the parties I would not consider the document in my decision, but both parties are at liberty to provide their affirmed testimony on anything relevant to the dispute.

The landlord indicated that their banking records for April 3 to May 2, 2022 show no deposits from the tenant.

The tenant testified she paid rent as follows:

Month	Rent paid	When and how paid	Monthly outstanding
April 2022	\$1,805.00	April 5 by e-transfer	\$0.00
May 2022	\$1,805.00	April 30 by e-transfer	\$0.00
June 2022	\$1,805.00	\$1,355.00 on June 1 by e-transfer, the rest paid by cheque by an organization	\$0.00
July 2022	\$1,805.00	July 2 by e-transfer	\$0.00
August 2022	\$1,805.00	August 2 by e-transfer	\$0.00

The tenant submitted as evidence a copy of an e-transfer receipt dated April 7, 2022. It is an email from a financial institution, to the tenant, and states that the rent amount sent to [landlord's name] has been successfully deposited.

The landlord submitted that the e-transfer receipt email showing that a payment was made was sent to the tenant, and it does not show what account the money was deposited to. The landlord submitted that it is possible to create a name for a payee, and that subsequent banking transactions will display that name.

The tenant submitted that her bank provides the payee name, and that she did not create the payee name for the landlord herself.

The landlord submitted that the tenant has not provided evidence that demonstrates that the payments were made to the landlord's email address.

The tenant testified she texted the landlord a picture of her bank statement showing that the April rent came out of her account. The tenant submitted as evidence a copy of a banking statement for the period of April 4 to May 3, 2022. Most of the entries are redacted, with only two transactions showing. The description for both says "ETTRANSFER TO [landlord's last name]," and both are for \$1,805.00. The transaction date for the first is April 7 and for the second is April 30.

The tenant testified she had submitted as evidence a copy of her bank statement for June 1 to July 4, 2022, and the landlord confirmed they had received a copy. The tenant was not able to tell me which of the six applications the document was uploaded to. Despite taking considerable time during the hearing to attempt to locate this document, it did not appear to be in evidence. The tenant testified that the bank statement listed an

e-transfer for \$1,355.00 made to the landlord on June 1 and posted on June 2. The tenant testified that the rest of the rent was paid by cheque by an organization.

The landlord submitted they had the tenant's evidence saying that the money was transferred, but that the landlord had not received the tenant's rent money.

The landlord submitted that the tenant's banking statement is heavily redacted, and that it could have listed a corresponding deposit back into the tenant's account. The landlord submitted that the tenant could instead have provided a bank statement with only others' names redacted.

The tenant's evidence includes an undated text string between the tenant and a person she described as the landlord's former secretary. In it, the former employee refers to the landlord being upset about the tenant withholding May rent.

The tenant's evidence includes an undated text from the landlord which states that the landlord has not received any money from the tenant for the last two months.

Analysis

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Based on the affirmed testimony of the landlord and witness NV, and the proof of service form submitted as evidence, I find the July 10 Day Notice was served on the tenant in accordance with section 88 of the Act by posting it to the door on July 4, 2022, and deem it received by the tenant on July 7, 2022, in accordance with section 90 of the Act.

I find that the July 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the Notice, states the reason for ending the tenancy, and is in the approved form.

I find that the tenant has failed to file an application for dispute resolution within 5 days of January 7, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have

accepted that the tenancy ends on the corrected effective date of the 10 Day Notice, July 17, 2022, and must vacate the rental unit.

In accordance with section 46 of the Act, I find the landlord is entitled to an order of possession.

The tenant testified that her rent has been paid in full for April through August 2022, and submitted documentary evidence in support, including a bank statement and e-transfer receipt emails sent to the tenant.

I accept the landlord's argument that the heavily redacted bank statement and the e-transfer receipt emails that do not show the amount was sent to the landlord's email address do not demonstrate that rent was paid to the landlord.

I find that some of the texts submitted as evidence by the tenant support the landlord's position that rent was not paid, in particular the text in which the former employee tells the tenant the landlord is upset about the tenant withholding May rent, and the text from the landlord to the tenant in which the landlord states they have not received any money from the tenant for the last two months.

The landlord testified that they have not received rent from the tenant for April through August, 2022, and that the tenant owes \$8,980.00 in unpaid rent. The landlord testified that their banking records for April 3 to May 2, 2022 show no deposits from the tenant.

One party claims rent was paid; the other claims it was not. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In this case, that evidence is the 10 Day Notices for April, May, and June 2022, each indicating an increased amount of rent owing. I find these notices support the landlord's claim that the tenant did not pay rent. I find it highly implausible that the landlord would serve repeated notices indicating increasing amounts owing if they had received rent for those months. The June Notice, which the tenant applied to dispute, indicates rent is owing in the amount of \$5,370.00, which corresponds to the landlord's testimony on rent owing.

Considering the foregoing, I favour the landlord's affirmed testimony on unpaid rent over that of the tenant, and find, on a balance of probabilities, and in accordance with section 55 of the Act, that the landlord is entitled to outstanding rent in the amount of \$8,980.00.

As the tenancy is ending, I find it is not necessary for me to consider the remaining notices to end tenancy.

As the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, August 12, 2022.

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 successful in their application, I order the tenant 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 the tenant's \$902.50 security deposit and \$902.50 pet damage deposit in partial satisfaction of the amount owing.

I find the landlord is entitled to a monetary order as follows:

Outstanding rent	\$8,980.00
Filing fee	\$100.00
Security deposit and pet damage deposit	-\$1,805.00
Owed to Landlord	\$7,275.00

Conclusion

The tenant's applications are dismissed.

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

The landlord is granted a monetary order for \$7,245.00.

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 26, 2022

Residential Tenancy Branch