



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, CNR, FFT (Tenant)  
OPR-DR, MNR-DR, FFL (Landlord)

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed their application April 17, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities dated April 10, 2022 (the “Notice”)
- For reimbursement for the filing fee

The Landlord filed their application April 26, 2022 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the Notice
- To recover unpaid rent
- For reimbursement for the filing fee

The Tenant appeared at the hearing with L.Z. to assist. The Landlord and M.D.S. (the “Landlords”) appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties provided evidence prior to the hearing. I addressed service of the hearing packages and evidence.

The Landlords confirmed receipt of the hearing package and evidence for the Tenant's Application.

The Tenant confirmed receipt of the Landlord's evidence but not the hearing package for the Landlord's Application. The Landlords did not know if the hearing package for the Landlord's Application was sent to the Tenant and therefore, I was not satisfied of service of the hearing package. Given this, I dismiss the Landlord's Application with leave to re-apply. However, the request for reimbursement for the filing fee is dismissed without leave to re-apply.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
2. Should the Notice be cancelled?
3. Is the Tenant entitled to reimbursement for the filing fee?

#### Background and Evidence

The parties submitted two different written tenancy agreements.

The Tenant testified that the tenancy agreement they submitted is accurate. The agreement is with the prior owner of the rental unit. The start date of the agreement is December 10, 2018. The tenancy is for a fixed term ending January 31, 2024. Rent is \$2,000.00 per month due on the first day of each month. A security deposit of \$2,500.00 was paid. The agreement is signed by the prior owner and the Tenant and was signed on May 18, 2021.

The Tenant testified as follows. They had a prior written tenancy agreement with the prior owner of the rental unit. There was a crack in the foundation of the rental unit which resulted in there being one less room that could be used and therefore the prior

owner reduced rent from \$2,500.00 to \$2,000.00 per month, and the parties signed the new tenancy agreement submitted by the Tenant.

The Tenant submitted that text messages in evidence show rent was \$2,000.00 when the prior owner was their landlord. The Tenant testified that rent became \$2,000.00 as of May 2021. The Tenant also submitted that text messages in evidence support their position about a room no longer being habitable, which the Tenant says is the reason for the rent reduction.

The Landlords testified that the written tenancy agreement they submitted is the accurate tenancy agreement between the Tenant and prior owner of the rental unit. The start date of the tenancy is December 10, 2018. The tenancy is for a fixed term ending January 31, 2024. Rent is \$2,500.00 per month due on the first day of each month. The security deposit amount is \$2,500.00. The agreement is signed by the Tenant and prior owner. The Tenant signed the agreement July 12, 2018, and the prior owner signed the agreement March 01, 2019.

The Landlords testified that the tenancy agreement they submitted is the tenancy agreement provided by the prior owner during the sale of the rental unit. The Landlords testified that the Landlord became the owner of the rental unit March 31, 2022.

The Landlord submitted a letter from a relator which says they spoke to the prior owner of the rental unit about the tenancy agreement and the prior owner confirmed the tenancy agreement submitted by the Landlord is the only tenancy agreement between the prior owner and Tenant.

The Notice states the Tenant failed to pay \$2,500.00 in rent due April 04, 2022. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated for the Landlord. The Notice has an effective date of April 20, 2022.

The Landlords testified that the Notice was posted to the door of the rental unit, sent by registered mail and emailed to the Tenant on April 10, 2022. The Tenant testified that they received the Notice April 11, 2022, by email.

The Landlords testified that the Tenant did not pay any rent for April and has not paid any rent since the Notice was issued.

The Tenant testified that they tried to pay \$2,000.00 in rent for April, but the Landlords would not accept this. The Tenant testified that they tried to pay rent in cash. The Tenant agreed they have not paid any rent since the Notice was issued.

In reply, the Landlords denied that the Tenant tried to pay any rent for April.

The Landlords testified that the Tenant currently owes \$2,500.00 in rent per month for five months, from April to August 2022.

The Tenant testified that they currently owe \$2,000.00 in rent per month for five months, from April to August 2022.

The Landlords sought an Order of Possession effective at the end of August.

The Tenant submitted an email dated April 06, 2022, in which M.D.S. provides rent payment details which include an email it can be transferred to. The Tenant submitted emails they sent to the prior owner about rent being \$2,000.00.

### Analysis

Section 26(1) of the *Act* states:

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

Section 46 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 46 state:

46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52...

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution...

Section 55(1) and (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...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.

The parties disagree about which written tenancy agreement submitted is accurate. I find it more likely than not that both agreements are accurate and that the Tenant and prior owner signed two separate agreements. I find both agreements are accurate because the prior owner and the Tenant signed both. Further, I do not have any direct evidence from the prior owner about the number of agreements signed between them and the Tenant. I find the Tenant is in a better position to know what they signed with the prior owner than the Landlords or realtor are because they were not parties to the agreements. I find the agreement signed in 2021 superseded the agreement signed in 2018 and 2019, and that the 2021 agreement is the current agreement in this matter. I find rent is \$2,000.00 per month due on the first day of each month pursuant to the 2021 agreement.

I find it more likely than not that the Tenant failed to pay April rent. The Tenant testified that they tried to pay April rent in cash, but the Landlords would not accept it. The Tenant did not submit any evidence to support their testimony that they tried to pay April rent. I do not accept the Tenant's testimony for two reasons. First, it does not accord

with common sense that the Landlords would decline \$2,000.00 in cash for April rent because the whole purpose of a tenancy is to collect rent in exchange for possession of the rental unit. Second, M.D.S. sent a letter to the Tenant April 06, 2022, stating that the Tenant can email rent to an email address provided. It does not accord with common sense that M.D.S. would send this letter if the Landlords were declining rent. Further, it is unclear why the Tenant did not simply pay rent by the email provided in M.D.S.'s letter if in fact the Landlords were denying cash payments. Given the evidence before me, I do not accept that the Tenant tried to pay April rent and I find the Tenant failed to pay April rent.

The Tenant did not point to any authority under the *Act* to withhold April rent and therefore I find the Tenant was required to pay \$2,000.00 by April 01, 2022, pursuant to section 26(1) of the *Act* and that section 46(3) of the *Act* does not apply.

Given the Tenant failed to pay April rent as required, the Landlord was entitled to issue the Notice pursuant to section 46(1) of the *Act*.

Based on the testimony of the parties, I find the Tenant received the Notice April 11, 2022, by email.

Upon a review of the Notice, I find it complies with section 52 of the *Act* in form and content as required by section 46(2) of the *Act*.

The Tenant had five days from receipt of the Notice on April 11, 2022, to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*.

Based on the testimony of both parties, I find the Tenant did not pay any rent after the Notice was issued. To be clear, I do not accept that the Tenant tried to pay rent after the Notice was issued for the same reasons outlined above.

The Tenant disputed the Notice April 17, 2022, within time give April 16 and 17, 2022 were a weekend. However, the Tenant has not provided any valid basis for disputing the Notice because I do not accept that the Tenant tried to pay April rent or tried to pay rent after the Notice was issued. Given this, the Tenant's dispute of the Notice is dismissed without leave to re-apply.

The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act* and is issued an Order effective at 1:00 p.m. on August 31, 2022.

Further, I accept that the Tenant has not paid rent from April to August of 2022 and therefore issue the Landlord a Monetary Order for \$10,000.00 for unpaid rent pursuant to section 55(1.1) of the *Act*.

In relation to the Tenant's request that the Landlord comply with the Act, regulation and/or the tenancy agreement, the Tenant's Application states:

My contract is \$2,000 per month, the new landlord forces me to increase the rent and change the term of the contract of the lease time.

I have decided that rent was \$2,000.00 per month. However, the tenancy is ending pursuant to the Notice and therefore this is moot. I dismiss the Tenant's request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement without leave to re-apply.

Given the Tenant was not successful in the Tenant's Application, they are not entitled to recover the filing fee and this request is dismissed without leave to re-apply.

### Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on August 31, 2022. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order for \$10,000.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: August 29, 2022

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Residential Tenancy Branch