



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPU MNRL-S**

Introduction

The hearing was reconvened as a result of the Landlord's application for dispute resolution ("Application") under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for non-payment of rent and utilities pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent and utilities pursuant to section 55; and
- authorization to keep the Tenant's security and/or pet damage deposit.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 10:07 am in order to enable the Tenant to call into this teleconference hearing scheduled for 9:30 am. An agent ("HR") for the Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that HR and I were the only ones who had called into this teleconference.

HR testified the Landlord served the NDRP and the Landlord's evidence (collectively the "NDRP Package") on the Tenant by registered mail on May 12, 2022. HR submitted into evidence a copy of a Canada Post receipt and the tracking number to corroborate his testimony that the NDRP Package was served on the Tenant. Based on the undisputed testimony of HR, I find the Tenant was served with the NDRP Package in accordance with sections 88 and 89 of the Act. Pursuant to section 90, I find the Tenant was deemed to have been served with the NDRP Package on May 17, 2022, being five days after its posting by the Landlord.

HR stated the Tenant did not serve any evidence on the Landlord for these proceedings.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a Monetary Order for unpaid rent and utilities?
- keep the Tenant's security and/or pet damage deposit(s)?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

HR submitted into evidence a copy of the tenancy agreement dated July 3, 2020 between the Landlord and Tenant. The tenancy commenced on August 1, 2020, for a fixed term ending July 31, 2021, with rent of \$2,000.00 payable on the first day of each month. The tenancy agreement indicates the Tenant is responsible for payment of the electrical utilities for the rental unit. The tenancy agreement acknowledged the Tenant paid the security deposit of \$1,000.00 on January 23, 2020. HR stated the Landlord is holding the security deposit in trust for the Tenant. HR stated the Tenant has not vacated the rental unit as of the date of this hearing.

HR stated the Landlord served a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated April 11, 2022 ("10 Day Notice") on the Tenant's door on April 11, 2022. HR submitted into evidence a copy of a signed and witnessed Proof of Service certifying the 10 Day Notice was served on the Tenant's door on April 11, 2022. I find the 10 Day Notice was served on the Tenant in accordance with the provisions of section 88 of the Act.

The 10 Day Notice did not state the effective date for move-out. The 10 Day Notice stated the Tenant had rental arrears of \$2,000.00 as of April 1, 2022 and unpaid utilities of \$1,239.35 as of April 11, 2022. HR stated the Tenant owes \$3,035.00 for rental arrears as of the date of this hearing, calculated as follows:

Date	Rent Owed	Paid	Balance
01-Apr-22	\$2,000.00	\$0.00	\$2,000.00
07-Apr-22		\$1,935.00	\$65.00
01-May-22	\$2,000.00	\$0.00	\$2,065.00
06-May-22		\$2,000.00	\$65.00
01-Jun-22	\$2,000.00	\$0.00	\$2,065.00
02-Jun-22		\$2,000.00	\$65.00
01-Jul-22	\$2,000.00	\$0.00	\$2,065.00
22-Jul-22		\$1,030.00	\$1,035.00
01-Aug-22	\$2,000.00	\$0.00	\$3,035.00
Total	\$10,000.00	\$5,965.00	\$3,035.00

HR stated the Tenant has not paid for the electrical utility in the amount of \$1,239.35. HR did not submit into evidence copies of the 30-Day Demand Letters to the Tenant demanding the Tenant pay for the electrical utilities nor did HR submit any proofs of service for certify the 30-Day Demand Letters were served on the Tenant. HR withdrew the Landlord's claim for the unpaid electrical utility.

HR stated the Tenant has sublet the rental unit without the consent of the Landlord.

Analysis

Sections 46(1) and 46(4) of the Act 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 *[form and content of notice to end tenancy]*.
- (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.

- (5) 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
 - (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
 - (b) *must vacate the rental unit to which the notice relates by that date.*

[emphasis added in italics]

Based on the undisputed testimony of HR, the Tenant was served with the 10 Day Notice on the Tenant's door on April 11, 2022. Pursuant to section 90, the Tenant was deemed to have received the 10 Day Notice on April, 14, 2022, being three days after the date of service of the 10 Day Notice on the Tenant's door. Pursuant to section 46(4) of the Act, the Tenant had 5-days, or until April 19, 2022, to make an application for dispute resolution to dispute the 10 Day Notice. The Tenant did not make an application for dispute resolution to dispute the 10 Day Notice. Pursuant to section 46(5)(a) of the Act, the Tenant was conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice. The 10 Day Notice did not specify an effective date for move-out.

Section 52 of the Act states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
 - (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,
 - (c) *state the effective date of the notice,*
 - (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 *[tenant's notice: family violence or long-term care]*, be accompanied by a statement made in accordance with section 45.2 *[confirmation of eligibility]*, and
 - (e) when given by a landlord, be in the approved form.

[emphasis in italics added]

The effective date was not specified in the 10 Day Notice as required by section 52(c) of the Act. As such, the 10 Day Notice was not effective. Based on the foregoing, I cancel the 10 Day Notice and dismiss the Application in its entirety without leave to reapply. The tenancy continues until ended in accordance with the provisions of the Act.

Conclusion

The 10 Day Notice is cancelled. The tenancy continues until ended in accordance with the provisions of the Act.

The Application is dismissed in its entirety without leave to reapply.

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 29, 2022

Residential Tenancy Branch