



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction and Preliminary Matter

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On March 28, 2022, the landlord applied for:

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

The hearing was attended by the landlord's agent ("the landlord") and tenant ME. They 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.

Tenant ME testified he received the landlord's materials, and had not submitted any responsive evidence.

The landlord testified she also served tenants MP and KJ the Notice of Dispute Resolution Proceeding on May 4, 2022, and her evidence on March 31, 2022, by registered mail to the rental unit. In the landlord's submitted evidence is a letter dated May 3, 2022, in which the landlord stated that MP and KJ "have moved out long [sic] time ago."

Section 89 states that one way an application for dispute resolution may be served is by sending a copy by registered mail to the address at which the person resides. As MP and KJ had moved out of the rental unit by May 3, 2022, I find the landlord did not serve her materials on MP and KJ in accordance with the Act.

[Residential Policy Guideline](#) 43. Naming Parties states that where one or more parties named on an Application for Dispute Resolution has not been served with the original application, the arbitrator may, with the applicant's consent, continue the hearing solely against the parties who were served, or dismiss the matter with leave to reapply. The landlord opted to proceed with the dispute against only tenant ME.

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?
- 3) Is the landlord entitled to the filing fee?

Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began March 1, 2020; rent is \$2,537.50, due on the first of the month, and the tenant paid a security deposit of \$1,350.00 which the landlord still holds.

A copy of the 10 Day Notice was submitted as evidence. The landlord testified that the 10 Day Notice was served on the tenant by posting it to the door on March 16, 2022, and provided a proof of service form signed by a witness. The tenant testified he had received the 10 Day Notice "around March 15" and that he had not disputed it.

The 10 Day Notice is signed and dated March 16, 2022 by the landlord, gives the address of the rental unit, states an effective date of March 29, 2022, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the tenant failed to pay rent in the amount of \$2,537.50, due on March 1, 2022.

The landlord testified that the tenant had paid rent for March on March 30, 2022, and a receipt for use and occupancy only was given. The landlord confirmed she was still seeking an order of possession, and testified the tenant had not paid rent for August 2022, in the amount of \$2,537.50. The tenant confirmed he had not paid rent for August 2022.

Analysis

Pursuant to section 46(1) of the Act, 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. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (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.

Based on the affirmed testimony of the parties, I find the landlord served the 10 Day Notice on the tenant on March 16, 2022 in accordance with section 88 of the Act, and deem it received by the tenant on March 19, 2022, in accordance with section 90.

I find the 10 Day Notice meets the form and content requirements of section 52 of the Act.

The landlord testified that the tenant paid the March rent on March 30, 2022

I find that the tenant did pay rent or file an application for dispute resolution within 5 days of March 19, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) to have accepted that the tenancy ended on the effective date of the 10 Day Notice, March 29, 2022, and must vacate the rental unit.

Therefore, I find the Landlord is entitled to an order of possession.

As the landlord testified that 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 23, 2022.

Based on the landlord's undisputed affirmed testimony, I find the tenant owes unpaid rent in the amount of \$2,537.50, which he must pay the landlord, pursuant to section 55(4) of the Act.

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 her 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 \$1,350.00 security deposit in partial satisfaction of the amount owing.

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

Unpaid rent	\$2,537.50
Filing fee	\$100.00
Less security deposit	-\$1,350.00
Owed to landlord	\$1,287.50

Conclusion

The landlord's application is granted.

The landlord is granted an order of possession and a monetary order in the amount of \$1,287.50.

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: September 06, 2022

Residential Tenancy Branch