



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The landlord applied on April 21, 2022 for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent, dated March 30, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent, having issued the 10 Day Notice; and
- the filing fee.

The hearing started on time at 11:00 a.m. The tenant did not attend, though the teleconference line remained open for the duration of the 29-minute hearing. The landlord attended the hearing, with an associate (JW), and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; he was also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified he served the Notice of Dispute Resolution Proceeding (NDRP) and some evidence on the tenant by registered mail on May 4, 2022, and provided a tracking number as noted on the cover page of the decision. The landlord testified that he served additional evidence on the tenant on September 7, 2022, by email and by leaving a copy in the tenant's mailbox. The landlord testified that the tenant acknowledged receipt of this evidence.

I find the landlord served the NDRP and a portion of his evidence on the tenant on May 4, 2022, in accordance with section 89 of the Act, and deem it received by the tenant on May 9, 2022, in accordance with section 90 of the Act. I find the landlord served additional evidence on the tenant on September 7, 2022 by placing it in the tenant's mailbox, in accordance with section 89 of the Act, and deem it received by the tenant on September 10, 2022, in accordance with section 90 of the Act.

Issues to be Decided

- 1) Is the landlord entitled to an order of possession and a monetary order for unpaid rent?
- 2) Is the landlord entitled to the filing fee?

Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began May 1, 2019; rent is \$1,950.00 a month, due on the first of the month; and the tenant paid a security deposit of \$975.00, which the landlord still holds. The landlord submitted a copy of the tenancy agreement as evidence, which states that rent is \$1,950.00.

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

The 10 Day Notice states the tenancy is ending as the tenant failed to pay rent in the amount of \$5,520.00, due on March 1, 2022.

JW testified the 10 Day Notice was served on the tenant by putting it in the tenant's mailbox on March 30, 2022, and a witnessed proof of service form is submitted as evidence.

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

| Month | Rent due | Rent paid | Monthly balance outstanding |
|----------------|------------|--------------|-----------------------------|
| February 2021 | \$1,950.00 | \$1,900.00 | \$50.00 |
| March 2021 | \$1,950.00 | \$1,950.00 | \$0.00 |
| April 2021 | \$1,950.00 | \$1,900.00 | \$50.00 |
| May 2021 | \$1,950.00 | \$1,200.00 | \$750.00 |
| June 2021 | \$1,950.00 | \$800.00 | \$1,150.00 |
| July 2021 | \$1,950.00 | \$1,900.00 | \$50.00 |
| August 2021 | \$1,950.00 | \$1,400.00 | \$550.00 |
| September 2021 | \$1,950.00 | \$1,000.00 | \$950.00 |
| October 2021 | \$1,950.00 | \$1,950.00 | \$0.00 |
| November 2021 | \$1,950.00 | \$3,900.00 | -\$1,950.00 |
| December 2021 | \$1,950.00 | \$0.00 | \$1,950.00 |
| January 2022 | \$1,950.00 | \$1,880.00 | \$70.00 |
| February 2022 | \$1,950.00 | \$1,000.00 | \$950.00 |
| March 2022 | \$1,950.00 | \$1,000.00 | \$950.00 |
| April 2022 | \$1,950.00 | \$0.00 | \$1,950.00 |
| May 2022 | \$1,950.00 | \$1,000.00 | \$950.00 |
| June 2022 | \$1,950.00 | \$1,500.00 | \$450.00 |
| July 2022 | \$1,950.00 | \$1,400.00 | \$550.00 |
| August 2022 | \$1,950.00 | \$1,595.00 | \$355.00 |
| September 2022 | \$1,950.00 | \$200.00 | \$1,750.00 |
| | | Total | \$11,525.00 |

In addition to his affirmed testimony, the landlord provided supporting evidence including two Direct Request Worksheets summarizing the rent paid and owing, and a copy of their own rent paid and owing tracking sheet.

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 undisputed testimony, of the landlord's associate, JW, I find JW served the 10 Day Notice on the tenant on March 30, 2022 by putting it in the tenant's mailbox. I find JW served the Notice in accordance with section 88 of the Act, and deem it received by the tenant on April 2, 2022, in accordance with section 90.

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

I find that the tenant did not file an application for dispute resolution within 5 days of April 2, 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 corrected effective date of the 10 Day Notice, April 12, 2022, and must vacate the rental unit.

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

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, September 26, 2022.

Based on the landlord's undisputed affirmed testimony, I find the tenant owes unpaid rent in the amount of \$11,525.00, which she 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 his 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 \$975.00 security deposit in partial satisfaction of the amount owing.

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

| | |
|-------------------------|--------------------|
| Unpaid rent | \$11,525.00 |
| Filing fee | \$100.00 |
| Less security deposit | -\$975.00 |
| Owed to landlord | \$10,650.00 |

Conclusion

The landlord's application is granted.

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 in the amount of \$10,650.00.

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: September 28, 2022

Residential Tenancy Branch