



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNU-DR, OPU-DR

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 26;
- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 9:56 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. Landlord MN (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. The landlord was assisted by FK. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord, his assistant and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

I accept the landlord's testimony that the tenant was served with the application, the interim decision and the evidence (the materials) by registered mail on May 28, 2022, in accordance with section 89(2)(b) of the Act (the tracking number is recorded on the cover of this decision).

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail, the tenant is deemed to have received the materials on June 02, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue – Vacant Rental Unit

The landlord affirmed the tenant moved out and he received the keys on August 07, 2022.

The application for an order of possession is moot since the tenancy has ended and the landlord has possession of the rental unit.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order of possession.

#### Preliminary Issue – Amendment of monetary claim

At the hearing the landlord sought to amend his application for \$6,600.00 in unpaid rent to include an additional \$11,000.00 for the unpaid rent of May, June, July, August and September 2022.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$17,600.00.

#### Issues to be Decided

Is the landlord entitled to:

1. a monetary order for unpaid rent?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on August 01, 2021. Monthly rent was \$2,200.00, due on the first day of the month. At the outset of the tenancy the landlord collected a security deposit of \$1,100.00 and a pet damage deposit of \$1,100.00. The landlord currently holds in trust the security and pet damage deposits (the deposits) in the amount of \$2,200.00. The tenancy agreement was submitted into evidence.

The landlord stated he attached the Notice to the rental unit's door on March 31, 2022 at 9:00 P.M.

The landlord submitted a copy of the Notice into evidence. The Notice is dated March 31, 2022. It indicates the tenant did not pay rent in the amount of \$6,600.00 due on March 31, 2022 for "3 months". The effective date was April 10, 2022.

The landlord testified the tenant did not pay rent for February, March, April, May, June, July, August and September 2022. The landlord said he has not been able to re-rent the rental unit until today.

The landlord submitted a direct request working sheet indicating the tenant did not pay rent in February, March, April, May and June 2022. The landlord is not seeking compensation for unpaid utilities.

### Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Based on the tenancy agreement and the landlord's undisputed and convincing testimony, I find the tenant agreed to pay monthly rent in the amount of \$2,200.00 on the first day of the month.

Section 44(1)(d) of the Act states the tenancy ends when the tenant vacates or abandons the rental unit.

Based on the landlord's undisputed and convincing testimony, I find the tenancy ended on August 07, 2022, per section 44(1)(d) of the Act.

Based on the landlord's undisputed and convincing testimony, the Notice and the direct request worksheet, I find the tenant did not pay the rent in accordance with section 26(1) of the Act in February, March, April, May, June, July and August 2022.

Per section 26(1) of the Act, I award the landlord February, March, April, May, June and July 2022 in the amount of \$2,200.00 per month and *per diem* rent from August 01 to 07, 2022 (the day the tenancy ended) in the amount of \$513.33 (\$2,200.00 / 30 days x 7 days).

The landlord is at liberty to apply for compensation for loss of rental income.

#### Filing fee and summary

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the \$2,200.00 deposits in partial satisfaction of the monetary award.

In summary:

Item	Amount \$
Unpaid rent February to July 2022 (2,200.00 x 6)	13,200.00
Unpaid rent August 01 to 07, 2022	513.33
Filing fee	100.00
Subtotal	13,813.33
Deposits (subtract)	2,200.00
<b>Total:</b>	<b>11,613.33</b>

Conclusion

Per sections 26 and 72 of the Act, I authorize the landlord to retain the \$2,200.00 deposits and award the landlord \$11,613.33. The landlord is provided with this order in the above terms and the tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court 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 *Residential Tenancy Act*.

Dated: September 26, 2022

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Residential Tenancy Branch