



# 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

This hearing was convened by way of conference call. The Landlord filed an Application for Dispute Resolution May 10, 2022 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 28, 2022 (the “Notice”)
- To recover unpaid rent
- For reimbursement for the filing fee

This was an adjourned direct request.

The Agent for the Landlord and Tenant 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.

The Agent confirmed the correct Landlord name which is reflected in the style of cause.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. The Tenant confirmed receipt of the hearing package and Landlord’s evidence and did not raise an issue with service.

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 Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started October 15, 2021. Rent is \$1,250.00 per month due on the first day of each month. The Tenant paid a security deposit of \$625.00.

The Agent asked that the Landlord be permitted to keep the security deposit towards unpaid rent.

The Notice was submitted as evidence. The Notice states the Tenant failed to pay \$2,500.00 in rent due March 01, 2022. The Notice has an effective date of April 07, 2022.

The Agent testified that the Notice was taped to the door of the rental unit March 28, 2022. The Tenant acknowledged receiving the Notice in March but could not recall the exact date they received the Notice.

The parties agreed the Tenant owed \$2,500.00 in rent when the Notice was issued.

The Agent confirmed the information on the Direct Request Worksheet submitted showing the Tenant made the following payments after the Notice was issued:

- \$1,650.00 March 29, 2022
- \$850.00 April 04, 2022
- \$400.00 April 26, 2022
- \$850.00 May 06, 2022

The Tenant testified that they paid \$500.00 to the Landlord on top of their rent for the month and caught up with the rent owing in May or June.

The Tenant confirmed they did not dispute the Notice and did not have authority under the *Residential Tenancy Act* (the “Act”) to withhold rent.

The parties agreed the Tenant currently owes \$600.00 in rent.

The Agent sought an Order of Possession effective November 01, 2022.

The Landlord submitted the Notice, a Proof of Service, Direct Request Worksheet, Tenant ledger and the tenancy agreement.

### Analysis

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

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.
- (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 testimony of the parties and written tenancy agreement, I find the Tenant is required to pay \$1,250.00 in rent per month by the first day of each month.

Based on the testimony of the parties, I find the Tenant had failed to pay \$2,500.00 in rent when the Notice was issued. Based on the testimony of the Tenant, I find the Tenant did not have authority under the *Act* to withhold rent. Given this, the Tenant was required to pay rent pursuant to section 26(1) of the *Act* and section 46(3) of the *Act* does not apply.

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

Based on the testimony of the Agent, I find the Notice was served on the Tenant in accordance with section 88(g) of the *Act* on March 28, 2022. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice March 31, 2022.

I have reviewed the Notice and 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 March 31, 2022, to pay the outstanding rent or dispute the Notice pursuant to section 46(4) of the *Act*. The Tenant had until April 05, 2022, to pay or dispute the Notice.

Based on the rent ledger, I find the Tenant made the following payments after the Notice was issued:

- \$1,650.00 March 29, 2022
- \$850.00 April 05, 2022
- \$400.00 April 26, 2022
- \$850.00 May 06, 2022

I find the Tenant paid the Landlord \$2,500.00 by April 05, 2022, and therefore cancelled the Notice pursuant to section 46(4)(a) of the *Act*. I acknowledge that April 01, 2022,

the Tenant owed the monthly rent and therefore an additional amount was owing. However, rent payments made are to go to the longest outstanding rent and here the \$1,650.00 paid March 29, 2022, and \$850.00 paid April 05, 2022, went towards the rent owing as noted on the Notice. Given this, the Tenant paid the outstanding rent within five days of receiving the Notice and cancelled the Notice.

Given the above, the Landlord is not entitled to an Order of Possession based on the Notice and this request is dismissed without leave to re-apply.

At the time of the hearing, the parties agreed the Tenant owed the Landlord \$600.00 in rent and therefore I award the Landlord this amount.

Given the Landlord has been partially successful on the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Landlord is entitled to \$700.00, and I issue the Landlord a Monetary Order in this amount pursuant to section 67 of the *Act*.

### Conclusion

The Landlord is not entitled to an Order of Possession based on the Notice and this request is dismissed without leave to re-apply.

The Landlord is entitled to \$700.00 and is issued a Monetary Order in this amount. 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: October 28, 2022

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Residential Tenancy Branch