



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR-DR, OPR-DR, FFL
Tenant: CNR, CNC

Introduction

This was a cross application hearing that dealt with the tenant's two applications for dispute resolution and the landlord's application for dispute resolution. The tenant's first application for dispute resolution, made pursuant to the *Residential Tenancy Act* (the *Act*), sought cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 47. The tenant's second application for dispute resolution sought cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46.

The landlord's application sought:

- an Order of Possession for Unpaid Rent, pursuant to sections 46 and 55;
- a Monetary Order for unpaid rent, pursuant to section 67; and
- recovery of the \$100.00 filing fee, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

At the hearing, both parties testified that the tenant moved out on or around October 4-5, 2022. I find that the tenant's applications for dispute resolution seeking to cancel two notices to end tenancy and the landlord's application for an Order of Possession are moot since the tenancy has ended and the tenant left 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 tenant's applications for dispute resolution and the landlord's application for an Order of Possession, without leave to reapply.

Both parties confirmed their email addresses for service of this Decision and Order.

Preliminary Issue- Service

The landlord testified that she served the tenant with a copy of her application for dispute resolution and evidence on September 22, 2022. The tenant testified that he received the above documents from the landlord and that the above date "sounds about right". I find that the tenant was served with the above documents in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2020 and has ended. Monthly rent in the amount of \$1,450.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant to the landlord.

The landlord testified that the tenant did not pay September 2020's rent. The landlord testified that rent during the tenancy was paid via e-transfer. The tenant testified that he sent the landlord a cheque for September 2022's rent. The landlord testified that she did not receive a cheque for September 2022's rent. The tenant testified that the cheque for

September 2022's rent was not cashed. The tenant did not submit any documentary evidence to support his testimony that he provided the landlord with a cheque for September 2022's rent. The tenant testified that he does not currently have the funds to pay for September 2022's rent.

The landlord testified that had she received a cheque she would have cashed it.

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 this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,450.00 on the first day of each month. Based on the testimony of both parties, I find that the tenant has not paid September 2022's rent as the alleged cheque was never cashed.

I find that if the tenant sent a cheque, it was never received by the landlord and that rent for September 2022 remains unpaid. I find that pursuant to section 26(1) of the *Act* the tenant is responsible for the payment of September 2022's rent in the amount of \$1,450.00.

As the landlord was successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$1,550.00.

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: October 27, 2022

Residential Tenancy Branch