



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

On May 6, 2022, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 46 of the *Residential Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent based on the Notice pursuant to Section 67 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

This hearing was scheduled to commence via teleconference at 1:30 PM on October 14, 2022.

D.L. attended the hearing as an agent for the Landlord; however, the Tenant did not attend at any point during the 18-minute teleconference. At the outset of the hearing, I informed D.L. that recording of the hearing was prohibited and she was reminded to refrain from doing so. As well, she provided a solemn affirmation.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

I dialed into the teleconference at 1:30 PM and monitored the teleconference until 1:48 PM. Only a representative for the Landlord had dialed into the teleconference during this time. 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 Tenant had not called into this teleconference.

D.L. advised that the Notice of Hearing and evidence package was served to the Tenant on June 18, 2022, by email. She testified that the Tenant informed the Landlord to use her email address for correspondence, and D.L. confirmed that this package was sent to that specific email address. She also submitted documentary evidence to indicate that the Tenant requested that correspondence be sent to this email address. D.L. stated that the Tenant replied by email on June 18, 2022, to acknowledge receipt of this package. Based on this undisputed evidence, I am satisfied that the Tenant was sufficiently served the Landlord's Notice of Hearing and evidence package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

D.L. advised that the tenancy started on January 7, 2022; however, the tenancy ended when the Tenant gave up vacant possession of the rental unit on May 31, 2022. She stated that rent was established at an amount of \$2,500.00 per month and that it was due on the first day of each month. A security deposit of \$1,250.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

She advised that the Notice was served to the Tenant by email on March 21, 2022. The Notice indicated that \$2,166.00 was owing for rent and that it was due on January 1, 2022. The effective end date of the tenancy was noted as April 1, 2022, on the Notice.

She stated that the Tenant did not pay April 2022 rent in full and still owed \$2,166.00. In addition to this, there was a late fee of \$25.00 for April 2022 rent, as per the tenancy agreement. Furthermore, she testified that the Tenant did not pay May 2022 rent, and that there was a \$25.00 late fee for this as well. Therefore, the Landlord is seeking a monetary award in the amount of **\$4,716.00** for the rental arrears and late fees. She referenced the documentary evidence submitted to support these claims.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 26 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 46 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

The undisputed evidence before me is that the Notice was emailed to the Tenant on March 21, 2022. As such, she was deemed to have received the Notice on March 24, 2022. According to Section 46(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 46(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenant was deemed to have received the Notice on March 24, 2022, she must have paid the rent in full or disputed the Notice by March 29, 2022, at the latest. However, the undisputed evidence is that the Tenant did not pay the rent in full and that she did not dispute the Notice. Based on the uncontroverted evidence before me, I am satisfied that the Tenant did not have a valid reason, or any authority under the *Act*, for withholding the rent. As the Tenant did not pay the rent in full, and as she had no authority to withhold the rent, I am satisfied that the Tenant breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 88 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 46 and 55 of the *Act*. However, as the Tenant has already given up vacant possession of the rental unit, it is unnecessary to grant an Order of Possession.

With respect to the Landlord's claims for rental arrears and late fees, I grant the Landlord a monetary award in the amount of **\$4,716.00**.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee. Under the offsetting provisions of Section 72 of the *Act*, I allow the Landlord to retain the security deposit in partial satisfaction of these claims.

Pursuant to Sections 38, 67, and 72 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
April 2022 rent arrears	\$2,166.00
April 2022 NSF fee	\$25.00
May 2022 rent arrears	\$2,500.00
May 2022 NSF fee	\$25.00
Filing Fee	\$100.00
Security deposit	\$1,250.00
Total Monetary Award	\$3,566.00

Conclusion

Based on the above, the Landlord is provided with a Monetary Order in the amount of **\$3,566.00** 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 14, 2022

Residential Tenancy Branch