



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent in the amount of \$612 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:20 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. The landlord was represented at the hearing by two agents ("**JH**" and "**AH**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that JH, AH, and I were the only ones who had called into the hearing.

The JH testified he served that the tenant with the notice of dispute resolution package and supporting documentary evidence via registered mail on June 17, 2022. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with these documents on June 22, 2022, five days after JH mailed them, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue - Amendment

At the hearing the landlord sought to amend its application to include a claim for May, June, and July 2022 rent which JH testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for

Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

In this case, the landlord is seeking compensation for unpaid rent that has increased since it first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for May, June, and July 2022 rent (\$1,836).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$2,448;
- 3) recover the filing fee; and
- 4) retain the security deposit in partial satisfaction of the monetary orders made?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord's agents, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The rental unit is an apartment in a multi-unit residential property (the "**Building**"). The landlord purchased the Building in November 2021 and took possession of it in March 2022.

The tenant and the prior owner of the Building entered into a tenancy agreement. JH testified that the prior owner did not provide them with a copy of the agreement. However, he testified that the prior owner provided the landlord with a list of all tenants in the Building and the amount of monthly rent each was to pay. The prior owner also transferred the security deposits of all the Building's tenants to the landlord. JH testified that the tenant's monthly rent is \$612 and that the landlord holds a security deposit of \$300 in trust for the tenant.

JH testified that tenant failed to pay any rent on April 1, 2022. On April 6, 2022, the landlord sent a 10-day notice to end tenancy for non payment of rent (the "**Notice**") to the tenant by registered mail (tracking number reproduced on the cover of this decision). It specified arrears owing as of April 1, 2022 of \$612 and an effective date of April 21, 2022.

The tenant neither paid the arrears specified on the Notice nor did she dispute the Notice within five days of receiving it, or at all.

JH testified that the tenant did not pay any rent for the months of May, June, or July 2022. He stated that the tenant started paying monthly rent in full (\$612) in August 2022, but she has not paid any of the rent owing between April and July 2022. He testified that the tenant is \$2,448 in arrears.

Analysis

I find that the landlord sent the tenant with the Notice on April 6, 2022, via registered mail. Pursuant to section 90 of the Act, I find that the Notice is deemed served on April 11, 2022. I have reviewed the Notice and find that it complies with the form and content requirements set out at section 52 of the Act.

Sections 47(4) and (5) of the Act state:

Landlord's notice: cause

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not 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 by that date.

As the tenant has not disputed the Notice or paid the arrears owed, and as the Notice complies with the section 52 form and content requirements, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The landlord is therefore entitled to an order of possession, pursuant to section 55 of the Act.

Based on the testimony of JH, I find that the tenant has failed to pay rent for April, May, June, July, or August 2022, in the amount of \$2,448. I order that she pay the landlord this amount.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$2,248, representing the following:

Description	Amount
Rent arrears	\$2,448.00
Deposit credit	-\$300.00
Filing fee	\$100.00
Total	\$2,248.00

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached orders by the landlord.

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 19, 2022

Residential Tenancy Branch