



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPU-DR, MNU-DR, FFL

### Introduction

The Landlord filed an Application for Dispute Resolution by Direct Request (the “Application”) on May 18, 2022 seeking an order of possession for the rental unit, a monetary order to recover the money for unpaid rent and utilities, and to recover the filing fee for their Application.

This participatory hearing was convened after the issuance of the June 29, 2022 Interim Decision of an Adjudicator. The Adjudicator determined that the Landlord’s application could not be considered by way of the Residential Tenancy Branch’s direct request proceedings, as had been originally requested by the Landlord. The Adjudicator reconvened the Landlord’s application to a participatory hearing as they were not satisfied with details of service of the notice to end tenancy the Landlord served to the Tenant previously.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on November 3, 2022. In the conference call hearing, I explained the process and provided the attending party, the Landlord, the opportunity to ask questions.

### Preliminary Matter – Landlord’s service of Notice of Dispute Resolution Proceeding

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the Notice of Dispute Resolution Proceeding for this hearing. The means the Landlord must provide proof that they served that document using a method allowed under s. 89 of the *Act*, and I must accept that evidence.

The Landlord set out how they served this Notice of Dispute Resolution Proceeding to the Tenant using email, and granted by an Adjudicator in an order dated June 8, 2022 after the

Landlord specifically applied for that means of service. The Landlord sent the Notice, and their evidence, to the Tenant via email on June 30, 2022, as they described in the hearing.

Based on the submissions of the Landlord, as well as the fact they sought an approved method of service, I find they served the Notice of Dispute Resolution Proceeding in a manner complying with s. 89(1)(f) of the *Act*. The hearing thus proceeded in the Tenant's absence. I find the Tenant had proper notification of this participatory hearing, and more likely than not chose not to attend.

#### Preliminary Matter – Tenancy previously ended

At the start of the hearing, the Landlord presented that the Tenant moved out from the rental unit sometime prior, on May 6, 2022. I dismiss the Landlord's Application for an Order of Possession for this reason, without leave to reapply.

#### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation for unpaid rent and/or unpaid utilities, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

#### Background and Evidence

The Landlord submitted a signed copy of the Residential Tenancy Agreement. This shows the start of tenancy date was November 1, 2021. The rent was \$1,700 per month payable on the first of each month, and did not increase over the course of the tenancy. Though the agreement shows a security deposit paid, the Landlord clarified in the hearing that the Tenant did not pay a security deposit at the start of the tenancy.

The Landlord provided a copy of the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") they signed on April 17, 2022. This provided for the end-of-tenancy date of April 27, 2022. The Landlord service this document to the Tenant in person on that date. A 'Proof of Service' document in the Landlord's evidence notes this same date; however, a witness provided that they observed service on April 10, 2022.

Page 2 of the document shows the reason the Landlord served the 10-Day Notice: this is unpaid rent in the amount of \$7,500, due on April 1, 2022, and utilities in the amount of \$1,099.50, after they gave a written demand to the Tenant on March 1, 2022.

The Landlord's written demand to the Tenant listed the amount of \$973.41 owing, dated March 3, 2022. This is a 40% portion of the total utilities amount of \$2,359.30, from November 1, 2021 to March 3, 2022. In the hearing, the Landlord clarified that the amount for utilities noted on the 10-Day Notice was incorrect; rather, the amount calculated on the document dated March 3, duly attached to the door of the rental unit for service to the Tenant, is correct.

The Landlord clarified the correct amount of rent owing, as recorded on the 10-Day Notice, at \$7,500. This was based on a partial payments by the Tenant totaling \$600 in December 2021 (leaving \$1,100 owing), then \$600 more in January 2022 (leaving \$1,200 owing), then no payments of rent for February, March, or April. The Tenant had sent a cheque for \$6,400 at the start of April; however, that cheque was "dishonored" meaning that there were not enough funds in the bank. In the evidence, the Landlord provided images of the returned cheques, one for \$1,100, and the second for \$6,400.

### Analysis

I have reviewed the copy of the tenancy agreement. In combination with the Landlord's oral testimony on its' terms and the conditions of how it was started with the Tenant, I am satisfied that the agreement existed between the Landlord and this Tenant knew the terms and conditions therein. Most importantly I find the Tenant was aware of the current rent amount at all times. Based on the testimony of the Landlord, and the proof of an agreement between the parties, I find the rent agreement was in place and clearly stated the amount of \$1,700 and schedule for payment.

The Act s. 46 states 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 a tenant receives the notice.

The Act s. 46(6) notes a landlord may end a tenancy where the agreement requires a tenant to pay utility charges, and they are unpaid after more than 30 days after written demand for payment.

The *Act* s. 46(4) says that within 5 days after receiving a notice under this section, a tenant must either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Based on the undisputed submissions by the Landlord, I find they provided the 10-Day Notice by a proper means of service to the Tenant. The Tenant then failed to pay the rent owing by April 22, within five days after the service date of April 17. There is no evidence before me that the Tenant disputed the 10-Day Notice within the five-day period. Because neither of these conditions were fulfilled, there is an outstanding amount of rent owing.

Based on the detailed testimony of the Landlord in the hearing, I find the Tenant owed the amount of \$7,500 as indicated on the 10-Day Notice. This remains unpaid, with the tenancy previously ending. I grant the Landlord a Monetary Order for this amount.

The Landlord presented an amount for utilities unpaid; however, I dismiss this portion of the Landlord's monetary claim for the following reasons:

- the Landlord did not provide evidence of actual utility amounts incurred at the rental unit property – this would take the form of invoices from the utility providers that the Landlord did not provide. These amounts are unsubstantiated for this reason.
- The Landlord provided the incorrect value on the 10-Day Notice, indicating that the notice they gave to the Tenant on March 3 (incorrectly labelled as March 1 on the 10-Day Notice) was the correct value. I cannot verify the amount given to the Tenant on March 3 without evidence, and a conflicting amount indicated elsewhere in the Landlord's evidence.
- There is no record that the Tenant was to pay 40% of the utility charges to the Landlord incurred at the rental unit property. This does not appear in the tenancy agreement, and there is no other written agreement or acknowledgement from the Tenant that this was an amount they were legally obligated to pay for.

For these reasons, I grant no award for utility charges to the Landlord.

The Landlord in the hearing also mentioned damage to the rental unit after the end of the tenancy, a rent amount for May 2022, and loss of subsequent use of the rental unit because of a pest problem. The Landlord did not amend their Application to include these amounts; therefore, I grant no award for these amounts and the Landlord must make a separate Application for further compensation.

I provide the Landlord with a Monetary Order for the outstanding rent amount owing, for \$7,500.

Because the Landlord was moderately successful in their Application, I grant only one-half of the Application fee reimbursement to them, at \$50.

### Conclusion

Pursuant to s. 67 and s. 72 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$7,550. 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 s. 9.1(1) of the *Act*.

Dated: November 3, 2022

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Residential Tenancy Branch