



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNR-MT**
 LL: OPR-DR MNR-DR FFL

Introduction

This hearing dealt with two applications for dispute resolution pursuant to the *Residential Tenancy Act* (the “Act”). The Tenant made one application (“Tenant’s Application”) for:

- an order for more time to make an application for dispute resolution to cancel a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated May 6, 2022 (“10 Day Notice”) pursuant to section 66; and
- if an order is granted for an extension of time to make an application, cancellation of the 10 Day Notice pursuant to section 46.

The Landlord made one application (“Landlord’s Application”) for:

- an Order of Possession for non-payment of rent and/or utilities pursuant to sections 46 and 55;
- a monetary order for unpaid rent and/or utilities pursuant to section 46 and 55; and
- authorization to recover the filing fee of the Landlord’s Application from the Tenant pursuant to section 72.

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 12:08 pm, in order to enable the Tenant to call into this teleconference hearing. The Landlord attended the hearing and was 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 were provided in the Notices of Dispute Resolution Proceeding for the Tenant’s Application and the Landlord’s Application. I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this

teleconference. I explained the hearing process to the Landlord who did not have questions when asked. I told the Landlord he was not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”).

The Landlord stated he served the Notice of Dispute Resolution Proceeding and his evidence for the Landlord’s Application (collectively the “Landlord’s NDRP Package”) on the Tenant in-person on June 3, 2022. Based on the undisputed testimony of the Landlord, I find the Tenant was served with the Landlord’s NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

The Landlord acknowledged he received the Notice of Dispute Resolution Proceeding and the Tenant’s evidence (“Tenant’s NDRP Package”). I find the Landlord was served with the Tenant’s NDRP Package in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Request for Amendment to Tenant’s Application to correct Landlord’s Name

At the outset of the hearing, I noted the Tenant had reversed the Landlord’s given name and surname when she named the Landlord in the Tenant’s Application. The Landlord stated the 10 Day Notice and the tenancy agreement correctly stated his legal name. The Landlord requested that I amend the Tenant’s Application to correctly state his correct legal name as the respondent.

Rule of Procedure 4.2 of the RoP 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.

The Tenant should have reasonably anticipated the Landlord would request that the Tenant’s Application be amended to correctly state his legal name. Based on the above,

I order that the Tenant's Application be amended to correctly state the Landlord's name as the respondent pursuant to Rule 4.2.

Preliminary Matter – Effect of Tenant's Non-Attendance at Hearing

Rules 7.1, 7.3 and 7.4 of the RoP state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not attend the hearing within 10 minutes of its commencement, pursuant to Rule 7.3, I dismiss the Tenant's Application without leave to reapply. As the Tenant was not present at the hearing, I will not consider any of the evidence submitted by the Tenant in advance of the hearing when adjudicating the Landlord's Application.

Preliminary Matter – Request by Landlord to Add Claim to Landlord's Application

During the Hearing, the Landlord stated the Tenant had caused damages to the rental unit in the amount of \$1,160.00. The Landlord did not make a claim in the Landlord's Application seek monetary compensation from the Tenant for damages she caused to the rental unit. The Landlord requested that I amend the Landlord's Application to add a claim to seek monetary compensation for \$1,160.00 from the Tenant. Rule 6.2 of the RoP states:

6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [*Related issues*]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

As stated in Rule 6.2, this hearing is limited to matters claimed in the Landlord's Application unless I allow him to amend the application. The Landlord had the opportunity of serving an amendment to the Landlord's Application, and submitting it to the Residential Tenancy Branch ("RTB"), at least 14 days before this hearing, to make a claim he was seeking monetary compensation for damages the Tenant caused to the rental unit. As the Tenant did not attend the hearing, I do not have the benefit of hearing submissions of the Tenant on whether the Landlord's Application should be amended to make a claim for compensation for damage. As such, I find the principles of procedural fairness dictate that I decline the Landlord's request for an amendment to the Landlord's Application at this hearing to allow him to claim for damages the Landlord claims were caused to the rental unit by the Tenant. The Landlord has the option of making a new application for dispute resolution to make his claim for monetary compensation for damages.

Preliminary Matter – Request for Landlord to Submit Additional Evidence

During the hearing, the Landlord stated the Tenant owed him \$2,400.00 for rental arrears but he was unable to explain how the rental arrears were calculated as he did not have all of his records available to him at the hearing. Pursuant to an Interim Decision dated September 28, 2022, I ordered the Landlord to prepare a ledger disclosing how the rental arrears were calculated commencing with April 1, 2022 including the amount and dates of any payments made by the Tenant (the "Ledger"). I instructed the Landlord to sign and certify the information provided in the Ledger was correct and to serve a copy on the Tenant at the email address provided in the Tenant's Application and to submit a copy of the RTB. The Landlord complied with the instructions provided in the Interim Decision and I have relied on the Ledger to complete my decision.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- a Monetary Order for the rental arrears owing by the Tenant to the Landlord?
- recover the filing fee of the Landlord's Application?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of MA, only the details of the respective submissions and/or arguments of MA relevant to the issues and findings in this matter are reproduced here. The relevant aspects of the Landlord's Application and my findings are set out below.

MA submitted into evidence a copy of the tenancy agreement dated December 12, 2021 ("Tenancy Agreement") between the Landlord and Tenant. The Tenancy Agreement states the tenancy commenced on December 12, 2021, with a fixed term ending November 30, 2022, with rent of \$1,400.00 payable on the 1st day of each month. The Tenant was to pay \$700.00 for a security deposit, and \$200.00 for a pet damage deposit, by December 12, 2021. MA stated the Tenant paid the security and pet damage deposits and that he was holding them in trust for the Tenant. Based on the foregoing, I find there was a tenancy between the Landlord and Tenant and that I have jurisdiction to hear the Landlord's Application.

MA stated the Tenant abandoned the rental unit on June 27, 2022 with giving any notification to the Landlord that she was vacating the rental unit. MA stated he found the key for the rental under the door mat.

MA submitted into evidence a copy of the 10 Day Notice and stated it was served on the Tenant's door on May 6, 2022. MA submitted into evidence a signed and witnessed Proof of Service on Form RTB-34 certifying the 10 Day Notice was served on the Tenant's door on May 6, 2022. Based on the undisputed testimony, and the Proof of Service, I find the 10 Day Notice was served on the Tenant's door in accordance with the provisions of section 88 of the Act.

The 10 Day Notice stated the Tenant owed \$1,450.00 as of May 1, 2022. The Landlord stated the Tenant has total rental arrears of \$2,400.00 that have accrued for the months of April through June 2022 inclusive, calculated as follows:

Date	Rent Owed	Paid	Balance
01-Apr-22	\$1,400.00		\$1,400.00
7-Apr-22		\$350.00	\$1,050.00
11-Apr-22		800.00	\$250.00
01-May-22	\$1,400.00		\$1,650.00
26-May-22		\$500.00	\$1,150.00
30-May-22		\$150.00	\$1,000.00
01-Jun-22	\$1,400.00		\$2,400.00
Total	\$4,200.00	\$31,000.00	\$2,400.00

Analysis

Sections 46(1) through 46(4) of the Act 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 [*form and content of notice to end tenancy*].
- (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.

MA stated he served the 10 Day Notice on the Tenant's door on May 6, 2022. As such, the Tenant was deemed to have received the 10 Day Notice on May 9, 2022, being three days after it was served on the Tenant's door. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or May 16, 2022, being the next business day after expiry of the 5-day dispute period, within which to make an application for dispute resolution to dispute the 10 Day Notice. The records of the RTB disclose the Tenant made the Tenant's Application on May 19, 2022. The effective date of the 10 Day Notice was May 19, 2022. As the Tenant did not attend this hearing and I have dismissed the Tenant's Application, it is unnecessary for me to consider whether the Tenant is entitled to an extension of time within which to make the Tenant's Application.

Section 26(1) of the Act states:

- 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I accept MA's undisputed testimony, and the information set out in the certified Ledger, in their entirety. Although the 10 Day Notice stated the Tenant had rental arrears of \$1,450.00 as of May 1, 2022 when the actual rental arrears disclosed in the Ledger were actually owing was \$1,400.00, I nevertheless find the Tenant was in breach of section 26(1) of the Act. I also find that, based on the undisputed testimony of MA, and the information set out in the Ledger, the Tenant had aggregate rental arrears of \$2,400.00 for May through June 2022, inclusive.

Sections 55(1) and 55(1.1) of the Act state:

- 55(1)** If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.
- (1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 *[landlord's notice: non-payment of rent]*, and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Although the amount of rental arrears claimed to be owing in the 10 Day Notice as of May 1, 2022 was \$50,00 more than the amount of rent actually owed by the Tenant, I find the difference was not significant in relation to the \$1,400.00 actually owed by the Tenant to the Landlord. As such I find the 10

Day Notice meets the form and content requirements of section 52 of the Act. Based on the foregoing, I find that the Landlord has demonstrated, on a balance of probabilities, that there was cause to end this tenancy pursuant to section 46(1) of the Act.

Section 55(1) of the Act provides that, where a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the Act, then I must grant the landlord an Order of Possession. As such, I find the Landlord is entitled to an Order of Possession pursuant to section 55(1) of the Act. However, as the Tenant has already vacated the rental unit, it is unnecessary for me to grant the Landlord an Order of Possession.

Pursuant to section 55(1.1) of the Act, if a tenant's application is in relation to non-payment of rent and the application is dismissed, then the director must grant an order requiring payment of the unpaid rent. As stated above, I have found the Tenant had aggregate rental arrears of \$2,400.00 for May through June 2022, inclusive. The Tenant must compensate the Landlord this amount. As such, pursuant to section 55(1.1) of the Act, I order the Tenant pay the Landlord \$2,400.00. Pursuant to section 72(2) of the Act, the Landlord may retain the security deposit of \$700.00 and pet damage deposit of \$200.00 in partial satisfaction of the Monetary Order made above.

As the Landlord has been successful in the Landlord's Application, pursuant to section 72(1), I order the Tenant pay for the Landlord's filing fee.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

Pursuant to section 55(1.1) of the Act, I order the Tenant pay the Landlord \$1,600.00 representing the following:

Description	Amount
Rental Arrears for May to June 2022 inclusive	\$2,400.00
Filing Fee for Landlord's Application	\$100.00
Less Tenant's Security Deposit	-\$700.00
Less Tenant's Pet Damage Deposit	-\$200.00
Total	\$1,600.00

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial Court.

Pursuant to section 71 of the Act, I order the Landlord may serve the Tenant, by substituted service, a copy of this Decision and a copy of the attached Monetary Order using the email address provided in the Tenant's Application for service as shown on the front page of this Interim Decision.

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: November 6, 2022

Residential Tenancy Branch