



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

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 \$750 pursuant to section 67; and;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This matter was reconvened from an *ex parte*, direct request proceeding by way of an interim decision issued November 4, 2022.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:18 am in order to enable the tenant to call into the hearing scheduled to start at 11:00 am. 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 had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlord and I were the only ones who had called into the hearing.

The landlord testified he served that the tenant with the notice of reconvened hearing and supporting documentary evidence via registered mail on November 8, 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 November 13, 2022, five days after the landlord mailed them, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Amendment

At the hearing the landlord sought to further amend their application to include a claim for November and December 2022 and January, February, and March 2023 rent which the landlord 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 he 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 November 2022 to March 2023 rent (inclusive).

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$3,750;
- 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 parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written, fixed term tenancy agreement starting January 1, 2022 and ending June 30, 2022. After the end of the fixed term, the tenancy converted to a month to month tenancy, as per section 44(3) of the Act. Monthly rent is \$750 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$350, which the landlord continues to hold in trust for the tenant.

The tenant rents a room in a single detached house. He shares the common areas of the house with other tenants. The landlord does not live in the house.

The landlord testified that the tenant did not pay any rent on September 1, 2022. As such, on September 11, 2022, he served the tenant with a 10 Day Notice to End Tenancy for Non-payment of Rent (the "**Notice**") by posting it on the door of the tenant's room. The Notice listed the tenant's room number two different ways (as 201 and as 206). The landlord testified that the correct room number was 206. This is the same number that is on the tenancy agreement and on the landlord's application.

The Notice specified arrears of \$750 and an effective date of September 21, 2022.

The tenant did not dispute the Notice.

Landlord testified that the tenant did not pay any rent on October 1 or November 1, 2022, but that, on November 7, 2022, the tenant paid him \$1,500. The tenant has not paid the landlord any amount for rent since.

Analysis

I accept the landlord's undisputed testimony in its entirety. Based on this testimony, and the tenancy agreement entered into evidence, I find that monthly rent is \$750 and is due on the first day of each month.

I accept the landlord's testimony that the tenant did not pay rent on September 1, 2022. Accordingly, I find that the tenant was \$750 in arrears when the Notice was served by posting it on the door of the tenant's bedroom rental unit. I find that this is sufficient service for the purposes of the Act.

I have reviewed the Notice and find that, aside from the discrepancy in unit number mentioned above, it complies with section 52 of the Act. In the circumstances, I find it appropriate to amend the Notice pursuant to section 68 of the Act, as the tenant knew or should have known his own address and should have been able to determine which of the two unit numbers listed on the Notice was correct.

Section 46 of the Act states:

Landlord's notice: non-payment of rent

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*].

[...]

(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.

(5) 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

- (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 to which the notice relates by that date.

I find that the tenant ultimately paid September's rent in November 2022. However, this payment does not cause the Notice to have no effect, as it was made outside the five-day period specified at section 46(4) of the Act.

Additionally, the tenant did not dispute the Notice in this five-day period, or at all.

Accordingly, I find that the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the Notice. The landlord is entitled to an order of possession. At the hearing, the landlord indicated that an effective date of two weeks after he serves the tenant with this decision and attached orders would be appropriate.

I accept landlord's testimony that the tenant is currently \$3,750 in arrears, and has not paid any rent since November 7, 2022 (when he paid September and October 2022 rent). I order the tenant to pay the landlord the full amount of arrears owed.

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

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit plus any accrued interest 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 \$3,498.86, representing the following:

Description	Total
Arrears (Nov 2022 to Mar 2023)	\$3,750.00
Credit for Security Deposit (plus interest)	-\$351.14
Filing fee	\$100.00
	\$3,498.86

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within 14 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: March 2, 2023

Residential Tenancy Branch