



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the "Act"), and dealt with the landlord's Application for Dispute Resolution (the Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 46 and 55 of the Act
- a Monetary Order for unpaid rent pursuant to section 67 of the Act (\$300.00)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

On March 27, 2023, the Adjudicator determined that this matter should be adjourned to a participatory hearing, which was scheduled for today, April 21, 2023, at 1:30 PM. The interim Decision should be read in conjunction with this Decision as there were findings made on service.

Both parties appeared gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The landlord's agent testified that the tenant failed to pay \$70 for December 2022, rent and \$960.00 for January 2023, rent. The agent stated that the tenant was served on

January 9, 2023, with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on January 9, 2023. Filed in evidence is a copy of the Notice.

The landlord's agent testified that the tenant paid the amount of \$730.00 leaving a balance due of \$300.00. The agent stated that the tenant failed to pay February, March and April 2023 rent,. The landlord stated the tenant was credited \$50.00. The landlord seeks to recover the unpaid rent in the total amount of \$3,138.00 and an order of possession.

The tenant does not dispute they were served with the Notice or the outstanding rent. The tenant thought since they signed a tenancy agreement on January 29, 2023 that a new tenancy was established. I note the tenancy agreement confirmed that the tenancy started on January 1, 2021, not the date it was signed.

The tenant was hopeful to make a repayment plan, which is not with in my authority to order.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, I do not find a new tenancy was established. The tenancy agreement signed on January 29, 2023, clearly stated that the tenancy started on January 1, 2021. As there was no prior tenancy agreement in writing as required by the Act, I find this was simply confirming the original agreement.

The tenant has not paid the outstanding rent and did not apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find that the landlord has established a total monetary claim of \$3,238.00 comprised of unpaid rent, and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$375.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$2,855.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: April 21, 2023

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Residential Tenancy Branch