



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, MNR, FFT

### 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 (\$1,676.25)
- authorization to recover the filing fee for this application from the tenant pursuant to section 72 of the Act (\$100.00)

On April 6, 2023, the landlord's application was considered. The Adjudicator determined that this matter should be sent to a participatory hearing scheduled for today May 15, 2023, at 9:30am. The interim decision should be read in conjunction with this decision as it made finding of service of the Application on the tenant.

On May 15, 2023, the landlord appeared. The landlord stated that they complied with the interim decision and the tenant was served with the required documents with a police escort on April 15, 2023. I find the tenant was served in accordance with the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The tenancy began on March 1, 2021. Current rent in the amount of \$1,776.25 was payable on the first of each month. A security deposit of \$875.00 was paid by the tenant.

The landlord testified that the tenant was served with the Notice on February 8, 2023, in person, which was witness by a 3<sup>rd</sup> party and also in the presents of the police, as the tenant had failed to pay rent for February 2023, in the amount of \$1,676.25.

The landlord testified that the tenant did not dispute the Notice and did not pay the outstanding rent within 5 days and is conclusively presumed to have accepted the tenancy has ended.

The landlord testified that the tenant paid the outstanding rent for February 2023 on March 6, 2023, in the amount of \$1682.95, paid \$1,700.00 on March 23, 2023, and \$100.00 on March 27, 2023, for March 2023 rent and paid \$1,800.00 on April 3, 2023, for April rent. The landlord stated that the tenant has not paid rent for May 2023 and there is a balance owing of \$1,722.05.

The landlord stated that rent for January 2023, was paid when they issued the Notice on February 8, 2023, and it was for February 2023 rent, which the tenant had to have known. The landlord indicated that the date in the Notice is an obvious error as the computer had change the date in this field.

### Analysis

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

I accept the evidence of the landlord that the tenant was served in person with the Notice of February 8, 2023, which was witness by a third party and the police. I find the tenant was served with the Notice, in accordance with the Act. I find the Notice complies with section 52 of the Act.

In this case, I accept the evidence of the landlord that the Notice was issued for failure to pay February 2023. While I note the Notice indicates that it was for January 2023, rent; however, that was simply because the computer technology inserted the wrong date as it was intended to be 1 February 2023, and not 2 of January 2023. Clearly the tenant had to have known it was for February 2023 rent as the Notice was issued on February 8, 2023. Therefore, I amend the Notice to reflect \$1,676.25 was due on 1 February 2023.

The tenant has not paid the outstanding rent within 5 days 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 tenancy legally ended on February 22, 2023, and the tenant is overholding the rental unit.

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 accept the evidence of the landlord that as of today's date the tenant has failed to pay rent for May 2023, in the amount of **\$1,722.05**. I find that the landlord has established a total monetary claim of **\$1,822.05** comprised of unpaid rent, and the \$100.00 fee paid by the landlord for this application. I grant the landlord an order pursuant to section 55 and 67 of the Act. 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.

Should the above amount remaining outstanding at the end of the tenancy the landlord is entitled to keep the security deposit as set out in section 38(3) of the Act.

### 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 a monetary order for unpaid rent and to recover the cost of the filing fee.

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: May 15, 2023

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Residential Tenancy Branch