



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the landlord’s March 21, 2023, application to the Residential Tenancy Branch for:

- (i) an order of possession on an undisputed notice to end tenancy (the “Notice”) under section 55(2)(b) of the Act;
- (ii) a monetary order for unpaid rent under section 67 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

The landlord attended the hearing while the tenant did not. The landlord testified under oath that the landlord served a *Notice of Dispute Resolution Proceeding* on the tenant by registered mail. There is proof of tracking information submitted into evidence. It is my finding that the tenant was served with the required notice in compliance with the Act.

Issues

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began November 1, 2019. Rent is \$1,624.00 due on the first day of the month. The landlord currently retains a \$800.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on March 10, 2023, by posting a copy to the door of the rental unit. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$1,624.00 that was due on March 1, 2023. All pages of the Notice were served and submitted into evidence. The tenant has not disputed the Notice and the landlord seeks an order of possession.

The landlord affirmed that:

- the tenant is currently \$6,496.00 in rental arrears, representing unpaid rent from March to June 2023.
- the tenant also owes late rent payment fees and cheque return fees amounting to \$300.00. The landlord submitted as evidence the tenancy agreement, which provides that late rent payments are subject to a charge of \$25.00 and any cheque returned is also subject to a charge of \$25.00.

Analysis

Under Section 7 of the Residential Tenancy Regulation, a landlord may charge a fee for the return of a tenant's cheque or for late payment of rent. However, according to Policy Guideline 4 (Liquidated Damages), a clause in a tenancy agreement providing for the payment by the tenant of a late payment fee will be a penalty if the amount charged is not in proportion to the costs the landlord would incur as a result of the late payment.

As the landlord did not provide evidence to demonstrate that the late rent payment fee (\$25.00) and cheque return fee (\$25.00) is in proportion to the costs the landlord would incur as a result of the tenant's breach, I am dismissing \$300.00 of the landlord's monetary claim as I find that the late fees and cheque return fees are a form of penalty.

Section 26 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 46(1) of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

Section 55(2)(b) of the Act permits a landlord to request an order of possession when a notice to end the tenancy has been given by the landlord, the tenant has not made an

application to dispute the notice, and the time for making any such application has expired.

In this case, the landlord served the Notice in accordance with the Act. Further, I find that the Notice complies with section 52 of the Act, and the tenant has not made an application to dispute the Notice. As such, it is my finding that the landlord has proven on a balance of probabilities that they are entitled to an order of possession.

A copy of the order of possession is issued with this Decision to the landlord. The landlord must serve a copy of the order of possession upon the tenant.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55 of the Act. Therefore, the tenant is ordered to pay \$6,496.00 in unpaid rent to the landlord.

Since the landlord was successful in its application, the landlord's application to recover the cost of the filing fee under section 72 of the Act is granted.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$800.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$5,796.00 is attached to this Decision and must be served on the tenant.

Conclusion

The application is hereby granted. The landlord is awarded an order of possession and a monetary order for the amount of \$5,796.00.

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: June 21, 2023

Residential Tenancy Branch