



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes**      CNR-MT, FFT  
                                 OPR-DR, MNR-DR, FFL

### **Introduction**

Under section 58 of the Residential Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 14, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling the notice to end tenancy for unpaid rent (the “Notice”), under section 46(4)(b) of the Act;
- (ii) more time to dispute the Notice under section 66 of the Act; and
- (iii) authorization to recover the cost of the filing fee under section 72 of the Act.

In addition, under section 58 of the Act, this hearing dealt with the landlord’s April 20, 2023, application to the Residential Tenancy Branch for:

- (i) an order of possession on 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.

### **Issues**

1. Is the tenant entitled to more time to dispute the Notice?
2. Is the tenant entitled to an order cancelling the Notice?
3. If not, is the landlord entitled to an order of possession?
4. Is the landlord or tenant 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 February 15, 2023. Rent is \$1,950.00 due on the first day of the month. The landlord currently retains a \$975.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on April 6, 2023 by delivering in person to an adult who appears to live with the tenant. The tenant confirmed that the tenant received the Notice on April 6, 2023. Page two of the Notice indicates that the tenant did not pay rent in the amount of \$3,900.00 that was due on April 1, 2023. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that the tenant is currently \$7,800.00 in rental arrears, representing unpaid rent for March, April, May and June 2023.

In response, the tenant affirmed that:

- the tenant is up to date on rent.
- the tenant had paid (i) \$3,900.00 to the landlord on March 1, 2023 in cash (representing rent for March and April 2023); and (ii) \$3,900.00 to the landlord on May 1, 2023 in cash (representing rent for May and June 2023). The landlord did not provide receipts to the tenant.
- the tenant does not have any evidence of having made these cash payments to the landlord.
- the tenant is applying for more time to dispute the Notice as the tenant received the Notice during a long weekend and did not know it was possible to file online.

In response, the landlord affirmed that the landlord did not receive any cash from the tenant on March 1, 2023 nor on May 1, 2023.

### Analysis

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.

When a *10 Day Notice to End Tenancy for Unpaid Rent* is received by a tenant, that tenant must, within 5 days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. If the tenant fails to do so, the tenant is conclusively presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the relevant notice.

In relation to the unpaid rent:

- the tenant affirmed that the tenant had paid (i) \$3,900.00 to the landlord on March 1, 2023 in cash (representing rent for March and April 2023); and (ii) \$3,900.00 to the landlord on May 1, 2023 in cash (representing rent for May and June 2023).
- the tenant affirmed that the tenant does not have any evidence of having made these cash payments to the landlord.
- the landlord affirmed that the landlord did not receive any cash from the tenant on March 1, 2023 nor on May 1, 2023.

A useful guide regarding conflicting testimony, and frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Taking into consideration all of the evidence before me, I find the landlord's submissions to be more reasonable because the tenant did not provide any evidence of having made the relevant cash payments. A reasonable person in the tenant's position would request a rental receipt from the landlord and keep a record of having requested for this if they

were making such a large payment in cash. If the tenant was unable to get a rental receipt from the landlord, a reasonable person in the tenant's position would apply to the Residential Tenancy Branch for an order requiring the landlord to provide rental receipts for rent paid in cash. The tenant, however, did not provide evidence of having taken any of these steps. Therefore, I find that the tenant did not pay (i) \$3,900.00 to the landlord on March 1, 2023 in cash; and (ii) \$3,900.00 to the landlord on May 1, 2023 in cash. Accordingly, I find that the tenant is currently \$7,800.00 in rental arrears.

The tenant's evidence is that the tenant received the Notice on April 6, 2023. The tenant, however, only disputed the Notice on April 14, 2023, which is more than 5 days after the tenant received the Notice.

Under section 66 of the Act, an arbitrator may extend a time limit established by the Act only in exceptional circumstances. In addition, according to Policy Guideline 36 (*Extending a Time Period*), the following are not considered exceptional circumstances:

- the party did not know the applicable law or procedure.
- the party was not paying attention to the correct procedure.

The reason the tenant provided for disputing the Notice late was because the tenant received the Notice during a long weekend and did not know the tenant could file online. As not knowing the applicable law or procedure / not paying attention to the correct procedure is not a valid reason for extending a time limit, I find that the tenant is not entitled to more time to dispute the Notice. Accordingly, I find that the tenant is conclusively presumed to have accepted the end of the tenancy. As a consequence, 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 \$7,800.00 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. The tenant's application to recover the cost of the filing fee under section 72 of the Act is dismissed.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$975.00 security deposit as partial satisfaction of the payment order. A monetary order for the remaining amount of \$6,925.00 is attached to this Decision and must be served on the tenant.

Conclusion

The tenant's application is dismissed without leave to reapply.

The landlord's application is granted. The landlord is awarded an order of possession and a monetary order in the amount of \$6,925.00.

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 02, 2023

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Residential Tenancy Branch