



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

This hearing was convened under the *Residential Tenancy Act* (The **Act**) in response to cross applications from the parties.

The Tenant filed their application on March 11, 2024. The Tenant seeks:

- Cancellation of the Landlord's Notice to End Tenancy for Unpaid Rent, signed by the Landlord's agent, AG, on March 2, 2024, with an effective date of March 12, 2024 (the **Notice**).
- Compensation for a "potential" monetary loss.
- Authorization to change the Rental Unit's locks.
- Authorization to assign or sublet the Rental Unit.

The Landlord filed their application on March 13, 2024. The Landlord seeks:

- An order of possession pursuant to the Notice.
- Compensation for unpaid March 2024 rent.
- Their \$100.00 filing fee.

The Landlord attended the hearing with two agents, GT, and AG. The Tenant did not attend the hearing, nor did they send an agent.

### **Service of Records**

AG testified that when the tenancy was ongoing, they were the primary contact for the Tenant. They testified that on the Notice the Landlord listed AG's address as address for service and they acknowledged receipt of the Tenant's application and other relevant records, at the stated address for service, in accordance with sections 88 and 89 of the *Act*.

AG testified that they served the Tenant with the Landlord's Application and other relevant records, by registered mail, on March 14, 2024. They testified that the Landlord's registered package was mailed to the Rental Unit. AG provide a tracking number, which I have copied on the cover page of my decision. I accept AG's testimony and I find the Tenant is deemed served with the Landlord's application and all relevant

documentary evidence, in accordance with section 90 of the *Act*, on March 19, 2024, the fifth day after the registered mailing, in accordance with sections 88 and 89 of the *Act*.

Both parties submitted copies of the Notice.

## **Background Facts and Evidence**

I have reviewed all evidence, including the testimony of the Landlord and their agents, but I will refer only to what I find relevant to my decision.

AG testified that this tenancy began on the date stated in the parties' tenancy agreement: February 15, 2019. In their application, the Tenant has listed the start of tenancy date as March 15, 2019. The parties' tenancy agreement states that this tenancy began on February 15, 2019.

The Landlord testified that they discovered the Rental Unit abandoned on April 1, 2024.

AG testified that the monthly rent in this tenancy, payable on the first day of every month, was \$1,914.00. AG agreed that, as stated in the Tenant's application, at the start of the tenancy, the Tenant paid to the Landlord a security deposit of \$925.00 and a pet damage deposit of \$925.00.

On the cover page of my decision, I have copied the file number for a previous dispute between the parties, which was heard and decided by Arbitrator DT on February 8, 2024 (the **Previous Decision**). I have reviewed the Previous Decision. Arbitrator DT ordered this tenancy ends at 1:00 PM on March 31, 2024, and provided the Landlord with an Order of Possession. Arbitrator DT also ordered the following:

As the Landlord was successful in their application, I grant the Landlord authorization to retain \$100 from the Tenants' \$925 security deposit under sections 62(3) and 72 of the Act. I find the Tenants' security deposit is now \$825 effective immediately.

Therefore, from January 15, 2019, to February 8, 2024, the Landlord held \$925.00 in security deposit in trust for the Tenant, and from February 9, 2024, to the date of this decision and hearing, the Landlord has held \$825.00 in security deposit in trust for the Tenant.

AG and the Landlord testified that the Tenant did not pay any amount for the month of March 2024, which led to the issuance of the Notice. AG testified that they served the Notice to the Tenant by registered mail. In their application, the Tenant has stated that they received the Notice on March 5, 2024, by registered mail. They submitted a copy of

the Notice. On page two of the Notice, the Landlord has stated that this tenancy must come to an end because of unpaid rent in the amount of \$1,914.00, due on March 1, 2024.

In their application, the Tenant has not provided a valid reason for why rent is not owed. They appear to be arguing that they are withholding March rent to ensure their deposit is not withheld by the Landlord after the effective date of the Order of Possession issued by the previous arbitrator.

The Landlord seeks March 2024 rent.

## **Analysis**

Based on the evidence before me, I find this tenancy began on February 15, 2019, not on March 15, 2019, as is stated in the Tenant's application.

Based on the Tenant's own application, I find they were served with the Notice, by registered mail, on March 5, 2024. I accept the Landlord's testimony that this tenancy has already ended. I will not decide whether this tenancy ended on April 1, 2024, or on March 31, 2024, in accordance with the Order of Possession issued by the previous arbitrator. The exact end date of the tenancy is not relevant to this dispute.

Section 46 of the *Act* states that upon receipt of a 10 Day Notice, the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Branch. The Tenant filed their application for dispute of the Notice late, on March 11, 2024. Section 46(5) states that when a Tenant fails to pay or file within five days, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and they must vacate the rental unit to which the notice relates by that date.

However, in this case, even if the above provision does not apply, I find the Tenant has not provided any valid reason for why rent is to be withheld in the month of March 2024. I accept the Landlord's and AG's testimonies that no rent was paid, by the Tenant, in March 2024. After reviewing the Tenant's application, I can find no evidence that they paid March 2024 rent, nor has the Tenant provided a valid reason for why rent was withheld. For clarity, the Landlord bears the onus to prove rent was not paid, and I have accepted their affirmed and unopposed testimony that the Tenant did not pay rent in March 2024.

Section 26 of the *Act* states that a tenant must pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations, or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the above, I find that the Tenant did not have a valid reason to withhold March 2024 rent and the Notice was issued for a valid reason. I uphold the Notice and dismiss the Tenant's application to dispute the Notice, without leave to reapply. A Tenant cannot preemptively withhold rent because of a theoretical possibility that the Landlord may withhold their deposits (as the Tenant appears to be arguing in their application).

I also dismiss the balance of the Tenant's application, without leave to reapply, for two reasons. First, the Tenant did not attend the hearing to make their case for why locks must be changed, what their monetary damage is, and why I must authorize a sublet/assignment of this tenancy. Second, I have already found this tenancy has ended and therefore the Tenant's claims for authorization to change locks and authorization for sublet/assignment are now moot. I have no testimony regarding the Tenant's monetary claim and in their application the Tenant states that they are seeking compensation for a "potential" loss. I cannot find any actual losses based on the records and testimony before me. In short, the Tenant's application is dismissed, without leave to reapply, in its entirety.

Eviction notices must abide by the form and content requirements of section 52 of the *Act*. I have reviewed the Notice and find that it complies with the form and content requirements of section 52 of the *Act*.

As this tenancy has already ended, there is no need for me to issue the Landlord with an order of possession. In addition, the Landlord is in possession of an Order of Possession, effective March 31, 2024. That portion of the Landlord's application is therefore dismissed, without leave to reapply.

The Landlord has established their monetary loss for unpaid rent in the month of March 2024, pursuant to sections 26 and 67 of the *Act*. I award the Landlord \$1,914.00 pursuant to section 67 of the *Act*.

Pursuant to section 72 of the *Act*, I award the Landlord their \$100.00 filing fee, to be collected from the tenant, because they were successful with their application.

In partial satisfaction of both awards outlined above, pursuant to section 72 of the *Act*, I order the Landlord to retain the following amounts:

- the Tenant's pet damage deposit, in the amount of \$925.00, plus interest, in the amount of \$25.69, calculated from January 15, 2019, to April 19, 2024; and
- the Tenant's security deposit, in the amount of \$825.00, plus interest, in the amount of \$25.07 (I have calculated the interest on \$925.00, from January 15, 2024, to February 8, 2024, and on \$825.00, from February 9, 2024, to April 19, 2024).

I issue the Landlord a Monetary Order for the remainder of the award that remains unsatisfied, as outlined in the conclusion section of my decision.

## Conclusion

The Tenant's application is dismissed, in its entirety, without leave to reapply.

The Landlord's application is partially granted. I dismiss their application for an order of possession and grant the balance.

I grant the Landlord a Monetary Order in the amount of **\$213.24** under the following terms:

Monetary Issue	Granted Amount
Unpaid rent in March 2024.	\$1,914.00
Plus: filing fee.	\$100.00
Less: pet damage deposit and accrued interest.	-\$950.69
Less: security deposit and accrued interest.	-\$850.07
<b>Total Amount</b>	<b>\$213.24</b>

The attached Monetary Order must be served to the Tenant as soon as possible. Should the Tenant fail to comply, the Monetary Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 19, 2024

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Residential Tenancy Branch