



Dispute Resolution Services

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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 April 5, 2024. The Tenant seeks cancelation of the Landlord's 10 Day Notice issued in April 2024.

The Landlord filed their application on April 11, 2024. The Landlord seeks an order of possession pursuant to their 10 Day Notice for Unpaid Rent and Utilities, a Monetary Order for Unpaid Rent, and their \$100.00 filing fee.

Service of Records

The Tenant did not attend the hearing and they did not send an agent. The Landlord attended the hearing. At the start of the hearing the Landlord testified that they were never served with the Tenant's application or any other records in relation to the Tenant's application. The Landlord testified that when they filed their own application, the Residential Tenancy Branch (the **Branch**) informed them that there is an application filed by the Tenant. They testified that the Branch never sent them a copy of the Tenant's application. I accept the Landlord's unopposed testimony.

For the above reason, and for the reasons that I will outline below, I dismiss the Tenant's application, without leave to reapply. For clarity, my decision to dismiss the Tenant's application is not solely based on service issues. Had the Tenant served their application to the Landlord in accordance with sections 88 and 89(1) of the *Act*, I would still dismiss their application without leave to reapply, for the reasons below.

The Landlord testified that they served their application to the Tenant by registered mail, on April 14, 2024. The Landlord provided copies of the Canada Post Customer Receipt bearing the relevant tracking number and the Tenant's address and name. The address on the receipt matches that of the Rental Unit. I accept the Landlord's testimony and evidence and find the Tenant is deemed served with the Landlord's application, in accordance with section 90 of the *Act*, by registered mail, in accordance with section 89 of the *Act*, on April 19, 2024, the fifth day after the registered mailing date.

The Landlord testified that their agent, SW, who resides in the same building that the Rental Unit is in, served the Tenant with the Landlord's documentary evidence, on April 29, 2024, in person. I accept the Landlord's unopposed testimony and I find it is more likely than not that the Tenant was served with the Landlord's documentary evidence, in person, by SW, on April 29, 2024. I note that Landlord's documentary evidence in its entirety is comprised of a copy of the eviction notice that the Tenant has also submitted, a copy of the parties' tenancy agreement, and copies of two INTERAC e-Transfer emails from the Tenant to the Landlord.

Preliminary Matters

During the hearing, the Landlord testified that since they filed their application, the Tenant has continued to reside at the Rental Unit without paying rent. The Landlord testified that the Tenant has not paid their \$1,550.00 May 2024 rent, which they are also seeking.

The Branch's Rule of Procedure 7.12 states that in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

I allow this amendment to the Landlord's Application as rent for May 2024 was clearly rent that the Tenant would have known about and resulted since the Landlord submitted their application.

Background Facts and Evidence

The Landlord testified that this tenancy commenced on September 1, 2021, pursuant to a written tenancy agreement, signed by both parties. I have reviewed the tenancy agreement submitted by the Landlord and I can see both parties' signatures.

The Landlord testified that the monthly rent, as stated in the tenancy agreement, is \$1,550.00, due on the first day of every month. The Landlord testified that the Tenant paid to them a security deposit in the amount of \$775.00, when the parties signed the tenancy agreement. At the top of the parties' tenancy agreement, I can see the following sentence: "THIS TENANCY AGREEMENT made on Aug. 23, 2021".

The Landlord testified that the Tenant failed to pay \$1,550.00 on March 1, 2024, and subsequently the Tenant failed to pay their \$1,550.00 rent on April 1, 2024.

The Landlord testified that on April 2, 2024, they served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, signed by the Landlord on April 2, 2024 (the **Notice**), by attaching the Notice to the Rental Unit's door.

The Landlord submitted a prescribed Branch Proof of Service form wherein SW states that they witnessed the Landlord, on April 2, 2024, attach a copy of the Notice to the Rental Unit's door. The proof of service form is signed by both the Landlord and SW.

On page two of the Notice, the Landlord has stated that the ground for ending this tenancy is unpaid rent in the amount of \$3,100.00.

The Landlord testified that on April 4, 2024, the Tenant paid them \$900.00, by INTERACT e-Transfer. The Landlord submitted a copy of the transfer.

The Landlord testified that on April 21, 2024, the Tenant sent them an e-transfer in the amount of \$2,200.00, with the following conditions (I have redacted the Rental Unit's address):

Message:

By accepting this transfer you agree to allow me to continue to rent the premises located at [REDACTED] and withdraw any actions currently being taken. Should you be out a filing fee I will consider paying it but it will have to be at my leisure. Any hours that I have accumulated working on the properties that have not been build out as of this date will still be collectible.

The Landlord testified that on April 22, 2024, the day following the above transfer, the Tenant canceled the transfer.

The Landlord submitted copies of both the April 21, 2024, e-transfer, and the cancelation notification dated April 22, 2024. The cancelation reads as follows: "Hi [Landlord], the money transfer of \$2,200.00 (CAD) sent to you on April 21, 2024 has been cancelled. As a result, you can no longer deposit these funds."

The Landlord testified that the Tenant failed to pay their \$1,550.00 May 1, 2024, rent.

Analysis

Based on the Landlord's affirmed and unopposed testimony, as well as the Landlord's signed proof of service form, I find that that the Tenant is deemed served with the Notice, in accordance with section 90 of the *Act*, on April 5, 2024, the third day after the

Landlord attached the Notice to the Rental Unit's door, in accordance with section 88 of the *Act*.

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.

I accept the Landlord's testimony that the Tenant only paid \$900.00 of the \$3,100.00 amount stated on the Notice within the five-day period.

The Tenant filed their application to dispute the Notice on April 5, 2024, within the five-day deadline. Even if I were to ignore the fact that they failed to serve their application to the Landlord (as required by section 89(1) of the *Act*), 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*.

I have already accepted the Landlord's testimony that the Tenant failed to pay the full arrears within five days. For clarity, I find the Landlord had valid reason to issue the Notice on April 2, 2024, because the Tenant failed to pay \$3,100.00 of rent due and owing on April 2, 2024. I make this finding by relying on the Landlord's unopposed testimony and by relying on their documentary evidence, namely the e-transfer records.

As outlined under section 26 of the *Act*, a Tenant cannot withhold rent without a valid reason. The Tenant did not attend the hearing and I cannot see any valid reasons outlined in the Tenant's application.

Eviction notices must abide by the form and content requirements of section 52 of the *Act*. I have reviewed the Notice and I find the Notice is noncompliant, because the effective date of the Notice is incorrect. The Notice was issued on April 2, 2024, but the effective date is stated as March 15, 2024. Despite the foregoing, section 53 of the *Act* states that incorrect effective dates are automatically changed. The effective date in this case, pursuant to section 52(2) is deemed to be the earliest date possible, which I find was April 15, 2024. I amend the Notice. Following my amendment, I find the Notice complies with the form and content requirements of section 52 of the *Act*.

For the above reasons, I find that the Notice is valid. I dismiss the Tenant's application to cancel the Notice, without leave to reapply.

Section 55(3) of the *Act* states that the director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

I grant the Landlord's application in full.

Pursuant to section 55 of the *Act*, I order this tenancy to end **two (2) days after service of the attached order to the Tenant**. I have discretion to extend the effective date of an order of possession in cases where the tenant identifies a need to be accommodated for disability or for other valid reasons. I was not provided with any reasons for why I should exercise my discretion. I cannot identify any reasons based on my review of the Tenant's application. I also note that the Tenant has only paid \$900.00 over three months. Given the totality of the evidence before me, I find no reason to extend the effective date of the Notice.

Pursuant to section 55 of the *Act*, the Landlord is also entitled to an order for the outstanding rent, in the amount of \$3,750.00 (three months' rent from March 1, 2024, to May 1, 2024, minus \$900.00 paid on April 4, 2024).

As the Landlord was successful, I award the Landlord their \$100.00 filing fee, pursuant to section 72 of the *Act*. Further, pursuant to section 72 of the *Act*, **I order the Landlord** to retain the Tenant's \$775.00 security deposit, in full, plus interest, in the amount of \$22.53, calculated from August 23, 2021, to May 6, 2024.

The above figures and orders are summarized under the conclusion section of my decision.

Conclusion

The Tenant's application to dispute the Notice is dismissed without leave to reapply.

The Landlord's application is granted in full. This tenancy ends **two (2) days after service of the attached order to the Tenant**. The Tenant is warned that any costs of enforcing the attached orders, including bailiff fees, may be recoverable from the Tenant, even after the tenancy ends.

I grant the Landlord a Monetary Order in the amount of **\$3,052.47**, as follows:

Monetary Issue	Granted Amount
a monetary order for unpaid rent.	\$3,750.00
Less, security deposit and accrued interest.	-\$797.53
Plus, filing fee.	\$100.00
Total Amount	\$3,052.47

The attached Order of Possession must be served to the Tenant before it is enforceable.

The 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: May 06, 2024

Residential Tenancy Branch