



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* for an Order of Possession based on a 10 Day Notice for Unpaid Rent and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 15 minute hearing. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing along with the Landlord’s evidence package was sent to the Tenant by registered mail on March 2, 2018 at the address of the rental unit. The tracking number for this package is included on the first page of this decision. The registered mail package was unclaimed and returned to the Landlord. The Landlord testified during the hearing that the Tenant was still residing at the rental unit address on March 2, 2018 when the registered mail was sent. As per Section 90 of the *Residential Tenancy Act*, service by registered mail is deemed five days after sending. As such, I find that despite being unclaimed, service of the Notice of Hearing is deemed to be received by the Tenant on March 7, 2018.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Preliminary Matters

During the hearing the Landlord claimed for a monetary order for unpaid rent, although they did not apply for this on their application for dispute resolution. As the Landlord stated on their application that rent was owing and that they were seeking the recovery of unpaid rent, I find their intentions clear despite not checking the monetary order request on the application. I also find that amending the application to include a monetary claim does not prejudice the respondent, given that the rent owing was outlined on the 10 Day Notice as well as the application for dispute resolution. I also find that as the Tenant received the 10 Day Notice which was based on unpaid rent, it would be reasonable for them to understand and accept that the outstanding rent will be owed to the Landlord. As such, I amend the application to include a monetary claim for unpaid rent pursuant to Section 64(3) of the *Act*.

Background and Evidence

The tenancy began on November 1, 2017 and was for a fixed term of one year. Monthly rent in the amount of \$1,605.00 was due on the first day of each month.

The Landlord provided affirmed and undisputed testimony that the Tenant did not pay rent for February, March and April 2018. The Landlord also provided the Tenancy Agreement as evidentiary material which outlines a \$25.00 per month late payment fee. The Tenancy Agreement was signed by both the Tenant and the Landlord on October 11, 2017.

A security deposit in the amount of \$802.50 was paid at the outset of the tenancy, which the Landlord is still in possession of. There was no pet damage deposit paid.

On February 19, 2018, the Landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") to the Tenant and posted it to the Tenant's door on the same day. The effective end of tenancy date of the 10 Day Notice was March 4, 2018. The Landlord testified that the Tenant did not make any payments towards rent owing since the issuance of the 10 Day Notice and they found that the rental unit was abandoned by the Tenant at the end of March 2018.

The Landlord testified that after the Tenant moved out of the rental unit, they had expenses for cleaning the rental unit, for junk removal and for the replacement of the mailbox key.

### Analysis

As the Landlord testified that the Tenant moved out of the rental unit at the end of March 2018, I find that an Order of Possession is no longer necessary and therefore will not be issued. During the hearing, the Landlord confirmed that they have possession of the rental unit and no longer require an Order of Possession. I find that the tenancy ended on March 31, 2018.

The Landlord's claims for costs incurred after the Tenant moved out of the rental unit were not known at the time this application for dispute resolution was filed. The respondent has a right to know the claims against them and would not have been aware of these costs based on the application for this dispute. As such, I will not consider the recovery of these costs within this decision. If the Landlord would like to file a claim for the recovery of these costs, the Landlord is able to file a separate application and serve the Tenant with the Notice of Hearing in accordance with the Rules of Procedure.

Based on the undisputed testimony of the Landlord, I find that the Tenant owes \$1,605.00 in rent for the months of February, March and April 2018, plus a \$25.00 monthly late payment fee for the months of February and March 2018. Although the Tenant left the rental unit at the end of March 2018, the Landlord testified that notice was not given regarding when the Tenant was moving out and therefore the unit was not able to be advertised for rent for the month of April 2018. As the Tenant did not move out by the effective end of tenancy date of the 10 Day Notice, the Landlord was unsure when they would have possession of the unit in order to advertise it for rent to a new tenant. As such, I find that rent for April 2018 is a loss that the Tenant is responsible for.

Section 67 of the *Act*, allows compensation for loss from one party not complying with the *Act*. In accordance with this section, I find that the Landlord is entitled to a Monetary Order in the amount outlined below. The Landlord is entitled to withhold the security deposit in partial satisfaction of the total amount owed. As the Landlord was successful in their application, I find that they are also entitled to the recovery of the filing fee paid for this application in the amount of \$100.00, pursuant to Section 72 of the *Act*.

*Monetary Order Calculations*

February 2018 rent	\$1,605.00
February 2018 late fee	\$25.00
March 2018 rent	\$1,605.00
March 2018 late fee	\$25.00
April 2018 rent	\$1,605.00
Recovery of filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$802.50)</i>
<b>Total owing to Landlord</b>	<b>\$4,162.50</b>

Conclusion

The Landlord's application for an Order of Possession was withdrawn during the hearing due to the Tenant no longer residing in the rental unit.

Pursuant to sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$4,162.50** for rent and late fees owed as of May 14, 2018, as well as the recovery of the filing fee. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this 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 14, 2018

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Residential Tenancy Branch