



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH POOL X1V LP AND METCAP LIVING MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNR OPR MNSD FF

### **Introduction:**

Both parties attended the hearing and gave sworn or affirmed testimony. The landlord said they served the 10 Day Notice to End Tenancy dated July 3, 2018 to be effective July 17, 2018 by posting it on the tenant's door and served the Application for Dispute Resolution personally. The tenant confirmed receipt. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67 for unpaid rent;
- b) To retain the security deposit to offset the amount owing;
- c) An Order of Possession pursuant to sections 46 and 55; and
- d) An order to recover the filing fee pursuant to Section 72.

### **Issue(s) to be Decided:**

Is the landlord entitled to an Order of Possession and a monetary order for rental arrears and to recover the filing fee for this application?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced October 1, 2011, a security deposit of \$460 was paid and rent is now \$1067.69 a month. It is undisputed that the tenant has not paid rent for July, August and September 2018 and also owes NSF fees and late fees as provided in her lease. The landlord requests an Order of Possession effective immediately as they need to re-rent the unit and a monetary order for \$3936.75. The landlord explained the amount owing as follows: \$1067.69 rent for June, August and September, \$533.85 owing for July, \$25 late fee and \$25 NSF fee for each month June to September. There were a few cents credit on the account which reduced the sum from \$3936.92 to \$3936.75.

The tenant said she has had an unfortunate time as she lost her job. She said she would like to stay until the end of September as she now has another job and gets paid

on September 28, 2018. The landlord declined this as they need to get the unit re-rented but said they would store her goods for free.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

**Order of Possession:**

I find the landlord entitled to an Order of Possession. The weight of the evidence is that there is unpaid rent from June to September. Section 46(5) of the Act states if a tenant who receives a 10 Day Notice for Unpaid rent does not pay the rent (within 5 days after receipt of the Notice) or make an Application for Dispute Resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice and must vacate the rental unit. I find the tenancy ended on July 17, 2018. The landlord is issued an Order of Possession effective two days from service.

**Monetary Order:**

The onus is on the applicant to prove on a balance of probabilities their claim. I find the tenant did not dispute that they owe the rent of \$3936.75 including late fees and NSF charges according to the landlord's ledger and calculations so the landlord has satisfied the onus.. I find the landlord may retain the security deposit of \$460 to offset the amount owing.

**Conclusion:**

I find the landlord entitled to an Order of Possession effective two days from service and to a monetary order as calculated below. The calculation includes an award of the filing fee and retention of the security deposit to offset the amount owing.

**Calculation of Monetary Award:**

Unpaid and over-holding rent including late fees and NSF charges to Sept.	3936.75
Filing fee	100.00
Less security deposit (no interest 2011-17)	-460.00
<b>Total Monetary Order</b>	<b>3576.75</b>

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: September 13, 2018

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Residential Tenancy Branch