



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S.  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFL, MNRL-S, OPC, OPR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit (the deposit) in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:40 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlords agents attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agents gave sworn testimony and provided documentation that the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was sent to the tenant by registered mail on June 5, 2019. I am satisfied that the landlord's agent served this Notice to the tenants in accordance with section 88 of the *Act*. In accordance with section 90 of the *Act*, the 10 Day Notice was deemed served to the tenant on June 10, 2019, five days later

The agent gave written evidence and sworn oral testimony that copies of the landlord's dispute resolution hearing package was sent to the tenant by registered mail on September 12, 2019. The landlord provided documentation to show that the tenant received and signed for the package on September 18, 2019. In accordance with section 89 of the *Act*, I am satisfied that the tenant was served notice of this hearing, accordingly the hearing proceeded and completed on this date.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenants' deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

### Background and Evidence

The tenancy began on or about December 1, 2012. Rent in the amount of \$780.00 is payable in advance on the first day of each month. The tenant started to fall behind in paying her rent in March 2019. MP testified that the landlord tried to work with the tenant because she is elderly however the tenant cut off all communication in July 2019. VH testified that the landlord issued numerous 10 Day Notices to End Tenancy in the hopes the tenant would catch up. MP testified that the landlord also issued a One Month notice to End Tenancy for Cause for repeated late rent, however, the tenant did not change her late payment and non payment pattern. The landlords issued the most recent 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on June 5, 2019 which the tenant has not disputed. VH testified that as of this hearing the amount of unpaid rent is \$4680.00. The landlord is also seeking the recovery of the filing fee.

### Analysis

The tenant failed to pay their rent in full within five days of being deemed to have received the 10 Day Notices. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants' failure to take either of these actions within five days led to the end of their tenancy on the corrected effective date of the notice.

As that has not occurred, I find that the landlord is entitled to an Order of Possession. The landlord is granted an Order of Possession pursuant to Section 55 of the *Act*, which must be served on the tenant(s). The landlord advised that the tenant made a partial payment for which she was given a receipt for "use and occupancy only" for the month of November. Based on the undisputed evidence provided by the landlord, I am satisfied that the tenants continues to owe the landlord unpaid rent. Using the offsetting

provision under Section 72 of the Act, I hereby apply the security deposit against the amount of unpaid rent. The landlord is also entitled to the recovery of the \$100.00 filing fee.

### Conclusion

<b>Item</b>	<b>Amount</b>
Unpaid Rent	\$4680.00
Filing Fee	100.00
Less Deposit	-315.00
<b>Total Monetary Order</b>	<b>\$4465.00</b>

The landlord is granted an order of possession and a monetary order for \$4465.00. The landlord may retain the security deposit.

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: November 15, 2019

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Residential Tenancy Branch