



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession for unpaid rent, pursuant to sections 46 and 55 of the *Act*;
- a monetary order for unpaid rent, pursuant to sections 26 and 67 of the *Act*;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- recovery of the filing fee, pursuant to section 72 of the *Act*.

I left the teleconference connection open until 11:15 A.M. to enable the tenant to call into this teleconference hearing scheduled for 11:00 A.M. The tenant did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the notice of hearing and evidence (the Materials) by registered mail on March 31, 2020 and April 02, 2020 in accordance with section 89(1)(d) of the *Act* (the tracking numbers are recorded on the cover of this decision).

Section 90 of the *Act* provides that a document served in accordance with Section 89 of the *Act* is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenant is deemed to have received the Materials on April 07, 2020.

The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Issues to be Decided

Is the landlord entitled to:

1. obtain an order of possession, pursuant to sections 46 and 55 of the Act?
2. a monetary order for unpaid rent pursuant to sections 26 and 67 of the Act?
3. recover the filing fee from the tenant?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the landlord, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained the attending party it is his obligation to present the evidence submitted.

The landlord affirmed the tenancy started on January 06, 2020. Monthly rent of \$2,100.00 is due on the first day of the month. At the outset of the tenancy a security deposit of \$1,050.00 was collected by the landlord and he still holds it in trust. The tenant has not vacated the rental unit.

The landlord affirmed rent for January 2020 was only \$1,675.00 because the tenant moved in on January 06, 2020. However, the tenant only paid \$750.00. During the month of February the tenant paid a total of \$2,550.00. The landlord does not remember the date he received this payment. On February 29, 2020 the tenant was in arrears for \$475.00.

On March 01, 2020 the tenant did not pay March's rent. Thus, the tenant was in arrears for \$2,575.00. At a later date in March the tenant submitted a payment of \$1,275.00.

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the Notice), dated February 24, 2020, for \$1,548.17 in unpaid rent due on March 01, 2020. The effective date is March 12, 2020. The Notice was left in tenant's mailbox on March 02, 2020.

The landlord was not able to explain the arrears mentioned in the Notice. The landlord affirmed he lent \$250.00 to the tenant during the month of February for personal expenses and this amount was included in the total arrears mentioned in the Notice.

A witnessed Proof of Service of Notice to End Tenancy form attesting the Notice was left in the tenant's mailbox at 10:15 A.M. on March 02, 2020 was submitted into evidence.

### Analysis

The Notice was left in the tenant's mailbox on March 02, 2020. I find the tenant was deemed served with the Notice on March 05, 2020, three days after it was posted to her door, in accordance with sections section 88(f) and 90(d) of the Act.

Section 52 of the Act states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and
- (e) when given by a landlord, be in the approved form.

The Notice is dated February 24, 2020 for arrears due on March 01, 2020. The landlord was not able to explain the arrears mentioned in the Notice. The landlord affirmed that the amount he lent to the tenant for personal expenses was included in the unpaid rent arrears.

I find the Notice is not in accordance with Section 52 (a) of the Act, as the Notice was signed before the amount in arrears was due and the landlord was not able to explain the amount in arrears.

As such, I dismiss the landlord's application for an order of possession.

Section 59(2)(b) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Procedural fairness requires the respondent be informed of the value of the monetary

claim and how it was arrived at. Furthermore, Rule 3.7 requires evidence to be organized and legible.

The landlord's application does not present a coherent accounting of his monetary claim for unpaid rent. The application states the landlord is seeking \$1,648.17. A monetary worksheet was not provided. The landlord's testimony was vague and not convincing. The landlord could not confirm the dates he received partial payments and the landlord affirmed the arrears includes \$250.00 he lent the tenant for personal expenses. Such amount can not be discussed in this application, as it is not related to a residential tenancy matter. I cannot determine from the evidence and testimony how much the tenant may or may not owe the landlord.

I find the landlord has failed to provide full particulars and organized evidence of his monetary claim, thus I dismiss the landlord's application for a monetary order.

### Conclusion

I dismiss without leave to reapply the landlord's application for an order of possession and for a monetary award for unpaid rent.

As the landlord was not successful in his application, he is not entitled to recover the filing fee for this application from the tenant.

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 27, 2020

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Residential Tenancy Branch