



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding IMH Pool XVI LP c/o Metcap Living Management  
Inc and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on April 6, 2021. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based off a 10 Day Notice to End Tenancy for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities;
- 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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and,
- to recover the filing fee from the tenant for the cost of this application.

The Landlord was represented at the hearing by an agent who provided affirmed testimony. The tenant did not attend the hearing. The landlord testified that she sent the Notice of Hearing and evidence package to the tenant on January 8, 2021, by registered mail. Proof of mailing was provided into evidence. I find the tenant is deemed to have received this package on January 13, 2021, the fifth day after its registered mailing, pursuant to Section 90 of the *Act*.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

### Preliminary and Procedural Issues

The Landlord stated that in addition to unpaid rent, she is seeking the accumulation of unpaid parking fees. The Landlord provided a copy of the parking agreement, which is an agreement the Tenant signed outside of the tenancy agreement. The Tenant pays a monthly fee to rent a parking space. However, the Landlord confirmed that this amount is not included in rent, and that it is based off a separate agreement. As stated in the hearing, I decline to consider this part of the claim, as I find I do not have jurisdiction to hear matters related to this separate parking agreement.

### Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the landlord entitled to a monetary order for unpaid rent or utilities?
3. Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38?
4. Is the landlord entitled to recover the filing fee from the tenant for the cost of this application?

### Background and Evidence

The Landlord stated that monthly rent is set at \$1,004.50, and is due on the first of the month. The Landlord holds a security deposit in the amount of \$300.00. The Landlord stated that they also rent a parking stall to the Tenant, under a separate agreement, for \$50.00 per month.

The Landlord stated that she is seeking an order of possession, and a monetary order for unpaid rent, which accumulated from April through till August of 2020. The Landlord provided a ledger, but was unable to speak to or clarify the amounts that were listed in the ledger.

The Landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Landlord stated that they sent this Notice to the Tenant by regular mail on December 8, 2020. The Landlord did not have any proof of service, or proof of mailing, as they did not use registered mail. On that Notice, the Landlord indicated that the Tenant owed and had failed to pay \$1,556.20, as of December 1, 2020.

In the hearing, the Landlord was asked to explain how this amount was calculated, and she stated she was "not sure" what that number is based on, as the form was auto

generated from their system. The Landlord stated that they issued a repayment plan to the Tenant in August of 2020, a copy of which was provided into evidence, for the rent he failed to pay from April 2020 through till August 2020.

As per the repayment plan, the Landlord indicated that the Tenant owed \$5,017.50, and that the Tenant was required to repay \$501.75 per month, from October 2020, until July 2021. The Landlord stated that the Tenant has failed to pay any of the repayment amounts.

During the hearing, I asked the Landlord to clarify how they calculated the amount they listed on their application form, \$4,765.00. The Landlord was not sure how this was calculated, and why it was different from the totals on the repayment plan. The Landlord was not sure if it was a combination of current month rent, plus amounts from the repayment plan, or if the amount on their application was just for the rent that accumulated during the Covid period (affected rent from 2020).

The Landlord was given several chances to speak to and clarify and help reconcile the amounts listed on the application, the repayment plan, and the Notice to End Tenancy. However, she was unable to explain how the amount on the 10 Day Notice was calculated, or how the amount of her application was calculated.

### Analysis

In this instance, as the applicant on this matter, the burden of proof is on the Landlord to prove the basis for the Notice to End Tenancy, and to prove their monetary claim. Based on the affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 26 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 46(1) of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days after receipt, under section 46(4) of the *Act*, to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 46(5) of the *Act*.

In this case, I find the Landlord failed to sufficiently explain how they arrived at the amount listed on the Notice to End Tenancy, issued December 8, 2020. The Landlord was unable to explain how that amount was arrived at, or what the amount should have been, if in fact there was a mistake on that Notice.

I find the Landlord has failed to prove the basis for the Notice, and has failed to sufficiently demonstrate what was owed by the Tenant at the time the Notice was issued in December 2020. As such, I hereby cancel that Notice, and I find it is of no force or effect. The Landlord's application for an order of possession based on this Notice is dismissed, without leave.

With respect to the Landlord's claim to recover unpaid rent, I find the Landlord has also failed to sufficiently articulate what amounts are owed. The Landlord was unable to reconcile how they calculated the amount listed on their application, and how that amount integrates with the existing repayment plan, and any accumulated amounts owing. It appears some of these amounts are automatically generated by the computer system, and there was a lack of understanding as to what the actual amount owing was, both at the time of the application, and as of the time of the hearing. Ultimately, I do not find the Landlord has sufficiently proven the amount they are owed.

Given the overarching lack of clarity regarding the amounts listed on the application, I dismiss the Landlord's application for monetary compensation, in full, with leave. I encourage the Landlord to familiarize themselves with the amounts owing, prior to any future hearing.

Since the Landlord was not successful, I decline to award the recovery of the filing fee.

### Conclusion

The Landlord's application for an order of possession is dismissed, without leave, and the Notice from December 2020 is cancelled.

The Landlord's application for monetary compensation is dismissed, with leave.

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: April 06, 2021

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Residential Tenancy Branch