



# 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      MNRL-S, MNDCL-S, OPR-PP, FFL

### Introduction

The landlord filed an Application for Dispute Resolution on January 19, 2021 seeking an order of possession of the rental unit, as well as recovery of money owing for unpaid rent. Additionally, they applied for reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”) on April 16, 2021.

Both parties attended the telephone conference call hearing. An agent for the tenants appeared on their behalf. That agent confirmed they received the prepared evidence of the landlord, delivered in advance of the hearing. That agent also confirmed they did not prepare or submit documentary evidence. On this basis, the hearing proceeded.

### Issue(s) to be Decided

Is the landlord entitled to issue an Order of Possession for unpaid rent, pursuant to s. 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to s. 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord spoke to the terms of the tenancy agreement, a copy of which they provided as evidence. The tenants signed the agreement on February 20, 2019 and the landlord followed with their signature on March 5, 2019. The tenancy began on May 1, 2019 for a fixed term ending on April 30, 2020. The rent amount was \$2,765 per month payable on the 1<sup>st</sup> of each month. The tenants paid a security deposit and a pet deposit, each at \$1,382.50.

The landlord provided a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice"), issued December 8, 2020. This document gave the move-out date of December 26, 2020. There was no method of service indicated on page 2. The reason for ending the tenancy was the tenant not paying the amount of \$543.50 that was due on December 1, 2020.

The landlord provided they served this document by regular mail to the unit, sent on December 8, 2020. In the hearing, the agent for the tenants stated they only had this document as it appeared in the landlord's prepared documentary evidence for this hearing. They described how the tenants did not receive this document. The tenant did not express a sense of urgency to the agent to prepare for this hearing, without having known of the landlord's express desire to end the tenancy for unpaid rent. In the interim, the tenant was paying rent amounts to the landlord, though not on the regular date (i.e., the 1<sup>st</sup> of each month) as specified in the agreement. The

The landlord provided a ledger showing amounts of unpaid rent outstanding. Separate entries add \$75 per month for parking and are reflected in the running total. On their Application, they listed the amount of \$8,350 owing, as "the rental arrears owing from the months of April 2020, May 2020, July 2020 and January 2021." The detailed ledger shows amounts owing and paid throughout the tenancy from March 5, 2019 onwards.

Though not prepared in advance of the hearing, and submitted to this branch on the day prior, an updated amount shows payments made, though still with outstanding amounts by the time of this hearing on April 16, 2021.

For the tenant agent's benefit, the landlord reviewed the ledger in the hearing, and listed all payments received for an amount owing:

- By February 2021, the outstanding balance with the addition of monthly rent became \$11,590.
- On February 10 and February 28, the tenant made two payments of \$2,840 each, bringing the balance down to \$5,910.
- There was no rent payment for March 2021, bringing the balance back to \$8,750
- The tenant made a payment \$2,840 on April 5, bring the balance amount from \$11,590 (as of April 1) to \$8,750.

The landlord provided a copy of a Repayment Plan dated August 25, 2020. This was as mandated by the Residential Tenancy Branch for unpaid rent for the period beginning on March 18, 2020 and ending on August 17, 2020. The base amount calculated for total rent arrears was \$5,435, and the landlord divided this into 10 equal payments of \$543.50. The monthly payment of these rent amounts was to commence on October 1, 2020, with the final payment being set on July 1, 2021.

In the hearing, the tenants' agent described how the tenants lost their jobs because of public health restrictions, and the last year has been a period of rebuilding. They provided that they were aware of the payment plan. They are "willing to reengage that process, but it has been a tough process." The agent provided that, as at the time of the hearing, they had another payment of \$2,840 ready for payment, and this would bring the balance down to around \$5,800 "which is where this all started."

The landlord responded to this to state they were sure the property managers would be willing to work on a payment plan, and get another agreement approved. In the hearing the landlord acknowledged that payments in amounts of \$2,840 were coming from the tenants for the previous few months in 2021. They provided the contact information for the property manager to the tenant's agent in the hearing.

### Analysis

The *Act* s. 26 sets out the duty of a tenant to pay rent:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence shows the landlord issued a 10-Day Notice on December 8, 2020 for rent amounts owing.

I order this 10-Day Notice is cancelled for the chief reason that the landlord did not ensure its service to the tenants. The tenants' agent in the hearing provided that they did not receive the document. The landlord specified it was sent via regular mail.

While s. 88(c) gives authority for a landlord to serve a 10-Day Notice via ordinary mail, there are other methods of service in place that provide a measure of surety on the delivery of a document. These include registered mail, in-person service, and leaving a copy at the address. The landlord here is not faulted for utilizing ordinary mail; however, there is direct testimony from the hearing in place that shows the tenants did not receive the document in due course.

Further, the tenants did not dispute the 10-Day Notice within the legislated timeframe of 5 days after they received it. This fact lends credence to the testimony that the tenants did not receive it. Minus evidence to the contrary that would prove service as fact, I find it more likely than not that the tenants did not receive the 10-Day Notice. The landlord's Application for an Order of Possession is based on this 10-Day Notice – because proof of service is not shown in the evidence, I dismiss this portion of the landlord's Application for this reason, without leave to reapply.

For the 10-Day Notice, the landlord indicated the reason for its issuance was for the tenants' failure to pay \$543.50. This is the amount the re-payment plan specifies for each month commencing on October 1, 2020. On my review of the ledger submitted by the landlord, these amounts owing are not reflected in the balance; however, there were other rent amounts owing on January 1, 2021 when the landlord issued the 10-Day Notice. While this outstanding amount formed the basis for the landlord issuing the 10-Day Notice, this amount owing is not reflected in the ledger and non-payments for each month from October onwards did not form part of the landlord's monetary claim. From this I am unable to determine what stands as unpaid rent amounts owing.

For this reason, I dismiss the portion of the landlord's Application wherein they claim for unpaid rent. It is not clear whether the outstanding balance incorporates the repayment plan amounts owing; therefore, the amount of claim is not clear in the evidence.

Further, the landlord in the hearing acknowledged the tenants have been more recently making payments. They provided correct contact information to the tenants' agent for the purpose of re-establishing a repayment plan.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the landlord was not successful in their claim, I find they are not entitled to recover the filing fee from the tenants.

### Conclusion

For the reasons outlined above, I order that the 10-Day Notice issued on December 8, 2020 is cancelled. There is no order of possession issued to the landlord and the tenancy will continue.

The landlord's Application for recovery of unpaid rent and other amounts is dismissed, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 19, 2021

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Residential Tenancy Branch