



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Meadows Development Ltd. and [tenant name  
suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR-DR, OPR-DR

### 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

- a monetary order for unpaid rent, pursuant to section 26; and
- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 46 and 55

I left the teleconference connection open until 10:16 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. The landlord, represented by director JB (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.

At the outset of the hearing the attending party affirmed he understands it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

I accept the landlord's testimony that the tenant was served with the notice of dispute resolution proceeding and evidence (the materials) by registered mail on September 25, 2021, the notice of hearing and interim decision on October 23, 2021 and the amendment on October 27, 2021, in accordance with section 89(2)(b) of the Act (the tracking numbers are recorded on the cover of this decision). All the packages were mailed to the rental unit address.

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 the tenant is deemed to have received the materials on September 30, 2021, the notice of hearing and the interim decision on October 28, 2021 and the amendment on November 01, 2021, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

#### Preliminary Issue – Amendment

At the hearing the landlord sought to amend the application for unpaid rent to include the unpaid rent of November 2021 in the amount of \$1,695.00.

The increase in the landlord's monetary claim for unpaid rent should have been reasonably anticipated by the tenant. Therefore, pursuant to section 4.2 of the Rules of Procedure and section 64 of the Act, I amend the landlord's monetary claim for unpaid rent to \$30,510.00.

#### Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. a monetary order for unpaid rent?

#### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, 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 rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed the tenancy started on May 01, 2014. Monthly rent currently is \$1,950.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$847.50 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence. It indicates monthly rent is \$1,695.00.

The landlord stated he served the Notice in person on June 30, 2021 and a ledger explaining the total amount of rent owed. The landlord submitted into evidence a

witnessed proof of service indicating the landlord served the tenant in person on June 30, 2021 at 1:15 (RTB form 34).

A copy of the June 30, 2021 Notice was submitted into evidence. It indicates the tenant did not pay rent in the amount of \$23,400.00 due on June 01, 2021. The effective date is July 10, 2021. It indicates the tenant's address is T\*\*.

The landlord testified the tenant has not paid rent and continues to occupy the rental unit.

The interim decision states:

I have reviewed all documentary evidence and I find that the unit number for the rental address on the Application for Dispute Resolution and the 10 Day Notice includes a designation "T" that does not appear on the tenancy agreement.

I also note that the amount of the monthly rent listed on the Direct Request Worksheet (\$1,950.00) does not match the monthly rent established in the tenancy agreement (\$1,695.00). I find the landlord has not submitted a copy of any Notice of Rent Increase forms to substantiate the claim for the increased rent.

The landlord said the rental unit is part of a senior community and the residents have the habit of including the letter T in their mailing address, but the correct address does not include the letter T. Canada Post delivers mail to the rental unit regardless of the letter T in the address.

The landlord submitted into evidence a monetary order worksheet indicating the tenant did not pay monthly rent in the amount of \$1,950.00 from June 2020 to May 2021. The landlord amended the application to reduce the claimed amount of monthly unpaid rent to \$1,695.00 and to include five more months of unpaid rent. The updated monetary order worksheet indicates the tenant did not pay monthly rent in the amount of \$1,695.00 from June 2020 to October 2021.

The total amount the landlord is claiming is \$30,510.00 (18 months of rent).

The landlord affirmed the tenant has not paid rent since 2018 and owes \$89,226.00. The landlord increased rent from \$1,695.00 to \$1,995.00 by way of serving a letter to the tenant.

The landlord served a repayment plan for rent due between March 18 and August 17, 2020. The landlord does not know the details of the repayment plan served.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### Order of possession

Based on the landlord's convincing testimony and the proof of service (RTB 34), I find the landlord served the Notice in person on June 30, 2021.

Section 46(2) of the Act state:

(2) A notice under this section must comply with section 52 [form and content of notice to end tenancy].

Section 46(2) of the Act is mandatory, and I do not have discretion as to its application.

Section 52 of the Act states:

**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.

(emphasis added)

The Notice must contain information to clearly explain the grounds for ending the tenancy. The landlord did not submit into evidence the ledger served with the Notice. The landlord did not indicate when he increased rent from \$1,695.00 to \$1,950.00. I find that the statements "23,400.00" and "June 01, 2021" are vague, as the landlord did not indicate in the Notice the months of rental arrears, the amount of unpaid rent each month, and the due dates.

Thus, I find the Notice does not comply with section 52(d) of the Act.

As such, I find the Notice does not comply with section 52 of the Act, it is not effective and I cannot issue an order of possession.

#### Unpaid rent

Section 42(3) of the Act states “A Notice of rent increase must be in the approved form.”

Based on the testimony offered by the landlord, I find the rent increase was not in accordance with section 42(3) of the Act, as the landlord served a letter to increase rent.

Based on the testimony offered by the landlord, tenancy agreement and the updated monetary order worksheet, I find the tenant must pay monthly rent in the amount of \$1,695.00 on the first day of the month and the tenant did not pay rent from June 2020 to November 2021.

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act.

Affected rent is rent due between March 18 and August 17, 2020, per section 01 of Ministerial Order M195.

Section 04 of the Covid-19 Residential Tenancy Act N.2 (the C-19 Regulation) states:

- (1) The following are terms of each repayment plan:
  - (a) the repayment period starts on the date the repayment plan is given by the landlord to the tenant and ends on July 10, 2021;
  - (b) the payment of the overdue rent must be in equal instalments;
  - (c) each instalment must be paid on the same date that rent is due under the tenancy agreement;
  - (d) the date the first instalment must be paid must be at least 30 days after the date the repayment plan is given by the landlord to the tenant.
- (2) A repayment plan must be in writing and include all of the following:
  - (a) the date the repayment period starts as determined under subsection (1) (a);
  - (b) the total amount of the affected rent that is overdue;
  - (c) the date on which each instalment must be paid;
  - (d) the amount that must be paid in each instalment

Based on the landlord's vague testimony, I find the landlord did not serve a repayment plan in accordance with the C-19 Regulation.

Residential Tenancy Branch Policy Guideline 52 states

If no valid repayment plan has been given to a tenant, or a valid repayment plan has been given to a tenant or a landlord and tenant have a valid prior agreement in place and the tenant is in good standing because:

- the first payment has not come due, or
- the tenant is paying the installments as required,

then an arbitrator may dismiss the application with leave to reapply, until such time as the tenancy ends and/or the tenant has failed to pay, at least, one installment.

Thus, I dismiss the claim for a monetary order for unpaid rent due on June, July and August 01, 2020.

Per section 26(1) of the Act, I award the landlord \$25,425.00 for September 2020 to November 2021 rent.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the security deposit held by the landlord. I order the landlord to retain the \$847.50 deposit in partial satisfaction of the monetary award.

### Conclusion

The Notice dated June 30, 2021 is cancelled and of no force or effect. This tenancy shall continue until ended in accordance with the Act.

Pursuant to sections 26 and 72(2)(b) of the Act, I authorize the landlord to retain the \$847.50 deposit and grant the landlord a monetary order in the amount of \$24,577.50.

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 30, 2021

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Residential Tenancy Branch