



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **MNR-DR, OPR-DR**

### Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the Act) and dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession based on unpaid rent and to obtain monetary compensation for unpaid rent.

On September 10, 2021, the Adjudicator considered the ex parte Direct Request Proceeding and determined that this matter should be heard at a participatory hearing. The interim decision should be read in conjunction with this Decision. The interim decision found the tenant was deemed served on August 29, 2021 with the landlord's application.

The landlord's agent testified that they complied with the interim decision as they sent the interim decision, Notice of Hearing to the tenant by registered mail on September 10, 2021. Filed in evidence is a copy of the Canada Post tracking number at the hearing, which I have also noted on the covering page of the Decision.

The landlord's agent testified that the tenant did not accept the package as it was returned unclaimed. The landlord's agent stated that the tenant has a pattern of not accepting registered mail.

I find the tenant was deemed served with the interim decision and Notice of Hearing, on September 15, 2021, five days after it was mailed. The tenant is cautioned that failing to pickup the package does not override the deemed served provision of the Act.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

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

### Background and Evidence

The tenancy began on October 1, 2020. Rent in the amount of \$3,300.00 was payable on the first of each month. Filed in evidence is a copy of the tenancy agreement.

The landlord's agent testified that the tenant was served with all 3 pages of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on July 15, 2021, by registered mail sent on July 20, 2021. The agent stated that they had not realized they had not uploaded the third page into the digital file, which was why the exparte proceeding was adjourned to a participatory hearing. Filed in evidence are now all 3 pages of the Notice. A Canada post tracking number was submitted as evidence.

The landlord's agent testified that they also posted another copy of the Notice to the tenant's door. I also find the tenant was served with an additional copy when posted to their door.

The notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

The landlord's agent testified that at the time they issued the Notice the tenant had failed to pay \$1,500.00 for July 2021 rent. The agent stated that the tenant made a \$900.00 payment towards August 2021 rent leaving a balance due for August in the amount of \$2,400.00 and has paid no subsequent rent. The agent stated that the tenant currently owes \$20,400.00 in unpaid rent. The landlord seeks an order of possession and a monetary order for the unpaid rent.

The landlord's agent stated that the tenant subleases a major part of the houses and he lives in the back yard lane house. The agent stated that the tenant keeps making up excuses why rent has not been paid as they communicate by text message.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, I am satisfied that the tenant is avoiding service, as all documents sent to the tenant by registered mail, in accordance with the Act, have been returned unclaimed. I find the tenant is attempting to avoid the provisions of the Act; however, section 5 of the Act, states that any attempt to avoid the Act is of no effect.

I find the tenant was deemed served with the Notice on July 25, 2021, five days after it was mailed. I also find the tenant was served with a second copy of the Notice when posted to their door.

The tenant has not paid the outstanding rent and did not apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

I find the landlord is entitled to a monetary order for unpaid rent. The tenant has failed to pay \$1,500.00 for July 2021, \$2,400.00 for August 2021, and \$3,300.00 for each month of September, October, November, December 2021 and January 2022. I find the landlord is entitled to recover unpaid rent in the total amount of **\$20,400.00**.

I find that the landlord has established a total monetary claim of **\$20,500.00** comprised of unpaid rent, and the \$100.00 fee paid by the landlords for this application. I grant the landlord a formal monetary order pursuant to section 67 of the Act. This order may be filed in the Provincial Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and a monetary order for unpaid rent and the cost of the filing fee.

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: January 05, 2022

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Residential Tenancy Branch