



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

The Landlord applies for the following relief under the *Residential Tenancy Act* (the “Act”):

- An order for possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy dated September 7, 2021 (the “10-Day Notice”);
- A monetary order for unpaid rent pursuant to s. 67 while holding a security deposit; and
- The return of their filing fee pursuant to s. 72.

L.M. appeared as agent for the Landlord. The Tenant did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord’s agent affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord’s agent confirmed that she was not recording the hearing.

The parties in the present dispute appeared before me on February 25, 2022 (the “original hearing”) and the Landlord’s application was adjourned to today’s hearing by consent. This was done so that the parties could discuss settling the dispute.

The Landlord’s agent advised that the Tenant was served with the Notice of Dispute Resolution and evidence for the original hearing by way of registered mail sent on October 24, 2022. The Tenant acknowledged receipt of the same during the original

hearing. I find that the Notice of Dispute Resolution and the Landlord's evidence was served in accordance with s. 89 of the *Act* and was acknowledged received by the Tenant.

Additional evidence in the form of an updated rent ledger was posted to the Tenant's door on February 23, 2022. I note that the Landlord was late in serving this evidence on the Tenant for the original hearing. However, with the adjournment, I find that it was served with sufficient time for today's hearing. I find that the updated rent ledger was served in accordance with s. 89(2) of the *Act* by posting it to the Tenant's door.

The Landlord's agent advises that the Notice of Dispute Resolution for the reconvened hearing had been served on the Tenant by way of registered mail sent on March 8, 2022. The Landlord's agent further advised that an email had been sent to the Tenant on March 15, 2022 to advise of today's hearing. Though the Notice of Dispute Resolution for the reconvened hearing had been sent directly to the Tenant by the Residential Tenancy Branch to the Tenant, I find that the Landlord served the Tenant with the notice for today's hearing in accordance with s. 89 of the *Act* by way of registered mail sent on March 8, 2022.

The Landlord provided the Residential Tenancy Branch with an updated rent ledger on March 9, 2022. The Landlord's agent advised that this was not included in the registered mail package sent on March 8, 2022. As the additional evidence was not served on the Tenant, it is not included and is not considered.

#### Preliminary Issue – Amendment to Landlord's Claim

At the outset of the hearing, the Landlord's agent advised that the Tenant had made efforts to the arrears, which accrued since September 1, 2021. Given these efforts, the Landlord's agent asked that the Landlord's claim for an order for possession be removed from their claim.

A further amendment is made to the application to reflect the additional arrears in rent that accrued from the time of filing the application to the date of the hearing, which is done on the basis that it was reasonably anticipated given the nature of the claim.

Pursuant to Rule 4.2 of the Rules of Procedure, I sever the Landlord's claim for an order for possession based on the request of the Landlord's agent. Further, I amend the claim

to reflect the updated arrears that accrued from the date of filing the application to today's hearing.

The hearing proceeded on the issue of the remaining unpaid rent.

Issue(s) to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent? If so, in what amount?
- 2) Is the Landlord entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issue in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took possession of the rental unit on February 1, 2021.
- Rent of \$1,818.00 was due on the first day of each month.
- The Landlord holds a security deposit of \$909.00 in trust for the Tenant.

A copy of the written tenancy agreement was put into evidence by the Landlord.

At the time of the original hearing and at the reconvened hearing, the Landlord advised that the Tenant had accrued arrears in unpaid rent in the amount of \$6,558.00 as at February 1, 2022. A rent ledger up to February 1, 2022 was put into evidence by the Landlord.

The Tenant indicated at the original hearing that he made a payment of \$5,000.00 to the Landlord sometime immediately before the hearing.

At the reconvened hearing, the Landlord confirmed the payment of \$5,000.00, which she says was received by the Landlord on February 25, 2022. The Landlord's agent further confirmed that \$1,800.00 was paid on March 8, 2022 and \$1,000.00 on March 15, 2022. Including the rent owed for March 1, 2022, the Landlord's agent advises that total arrears are \$576.00.

## Analysis

The Landlord seeks an order for unpaid rent.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent.

In the present circumstances, I accept the undisputed evidence of the Landlord that rent was not paid in accordance with the tenancy agreement and the Tenant had no lawful reason for withholding rent from the Landlord. I find that the Tenant breached their obligation to pay rent as set out in the Tenancy Agreement. This breach gives rise to the Landlord's claim for a monetary award for unpaid rent.

I accept the Landlord's evidence in the form of the rent ledger ending on February 1, 2022 that as at that time the Tenant owed \$6,558.00 in rent. I further accept the testimony of the Landlord's agent that the Tenant made the following payments on his arrears:

- February 25, 2022 - \$5,000.00
- March 8, 2022 - \$1,800.00
- March 15, 2022 - \$1,000.00

Including the amount of rent owed by the Tenant on March 1, 2022, the arrears on February 1, 2022, and the payments listed above, I find that the Tenant owes the Landlord \$576.00 in unpaid rent.

As the Tenant continues to occupy the rental unit, the Landlord could not have mitigated their damages.

Accordingly, I find that the Landlord has established a monetary claim in the amount of \$576.00 and they shall have an order in that amount. In full satisfaction of the arrears, I direct pursuant to s. 71(2) that the Landlord retain a portion of the security deposit with respect to the arrears.

### Conclusion

The Landlord's claim for an order for possession is severed at the request of the Landlord.

I order pursuant to s. 67 of the *Act* that the Landlord has established a monetary claim in the amount of \$576.00, representing the remaining amount of unpaid rent to date.

As the Landlord was successful in their application, I find that they are entitled to the return of their filing fee. I order pursuant to s. 72 that the Tenant pay the Landlord's \$100.00 filing fee.

Taking the amounts listed above into account, I find that the Tenant owes the Landlord \$676.00. Pursuant to the Landlord's application, I direct pursuant to s. 72(1) of the *Act* that the Landlord retain **\$676.00** in full satisfaction of the outstanding arrears in rent and the filing fee. The remaining security deposit is \$233.00.

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: March 24, 2022

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Residential Tenancy Branch