



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AST AND AST ENTERPRISES  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR MNR-DR FFL

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (Act). The landlord applied for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated November 29, 2021 (10 Day Notice). This application began as an ex-parte application through the Direct Request process and was adjourned to a participatory hearing based on an Interim Decision dated January 17, 2022, which should be read in conjunction with this Decision.

At the participatory hearing, landlord agent JT (agent) attended the hearing. The hearing process was explained to the agent and the agent was given an opportunity to ask questions about the hearing process. Thereafter the agent gave affirmed testimony, was provided the opportunity to present the landlord's' relevant evidence orally and in documentary form prior to the hearing and make submissions to me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated December 10, 2021 (Notice of Hearing) was considered. The agent testified that the Notice of Hearing was served by registered mail and the tracking number was submitted in evidence and has been included on the style of cause for ease of reference. A registered mail tracking number was provided in evidence and has been included on the cover page of this decision for ease of reference. According to the Canada Post online registered mail tracking website, the package was mailed on December 10, 2021 and the tenant failed to pick up the registered mail package and on January 17, 2022, it was returned to the landlord as unclaimed. Pursuant to section 90 of the Act, documents served by registered mail are deemed served 5 days after they are mailed. Therefore, I find the tenant was deemed served as of December 15, 2021.

As a result, I find this matter to be unopposed by the tenant. The hearing continued without the tenant present as a result pursuant to Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rules 7.1 and 7.3, which deal with the consequences of failing to attend a dispute resolution hearing.

I have reviewed all evidence before me that met the requirements of the RTB Rules. However, only the evidence relevant to the issues and findings in this matter are described in this decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

The agent was informed at the start of the hearing that recording of the dispute resolution is prohibited under the RTB Rule 6.11. The agent was also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the agent was informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. The agent did not have any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the landlord did not have an email address for the tenant, the decision will be sent via regular mail to the tenant.

The agent confirmed that the landlord deemed the tenant abandoned the rental unit as of December 31, 2021 and as a result, the landlord did not require an order of possession. As a result, I will only consider the monetary claim before me.

Furthermore, the agent testified that in addition to the rent owed for November 2021, the tenant has subsequently not paid the rent for December 2021. As a result, the agent requested to amend the application to include rent owed for December 2021. I find this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, pursuant to section 64(3)(c) of the Act, I amend the application to include unpaid rent for December 2021.

The agent also requested to offset any amount owing by retaining the tenant's security deposit of \$475.00 as the tenant has failed to provide their written forwarding address to the landlord.

### Issue to be Decided

- Is the landlord entitled to a monetary order under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. The tenancy began on December 15, 2020. Monthly rent was \$950.00 per month and due on the first day of each month. The tenant paid a security deposit of \$475.00 at the start of the tenancy, which the landlord continues to hold.

The agent submitted a copy of the 10 Day Notice. The agent stated the tenant failed to pay rent as claimed and did not dispute the 10 Day Notice. The agent testified that the tenant owes \$950.00 for November 2021 rent and \$950.00 for December 2021 rent.

The landlord is also seeking the recovery of the filing fee.

### Analysis

Based on the undisputed testimony of the landlord and the undisputed documentary evidence before me, and on the balance of probabilities, I find the following.

Firstly, I find the tenant breached section 26 of the Act, which states that a tenant must pay rent when it is due in accordance with the tenancy agreement.

Therefore, I grant the landlord **\$1,900.00** for unpaid November and December 2021 rent. As the landlord's application was successful, and pursuant to section 72 of the Act, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**, resulting in a total monetary claim of **\$2,000.00**.

Pursuant to section 38 and 62(3) of the Act, I authorize the landlord to retain the tenant's full security deposit of \$475.00 towards the amount owing by the tenant to the landlord. I grant the landlord a monetary order pursuant to section 67 of the Act in the remaining balance owing by the tenant to the landlord in the amount of **\$1,525.00**.

Conclusion

The landlord's application is successful.

The landlord has established a total monetary claim of \$2,000.00 as indicated above and has been authorized to retain the tenant's full security deposit to offset that amount. The landlord has been granted a monetary order in the balance owing by the tenant to the landlord of \$1,525.00 pursuant to section 67 of the Act. The landlord must serve the tenant with the monetary order and a demand letter prior to enforcing the monetary order at the Provincial Court (Small Claims).

This decision will be emailed to the landlord and sent by regular mail to the tenant. The monetary order will be emailed to the landlord for service on the tenant as necessary.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 5, 2022

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Residential Tenancy Branch