



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MetCap Living Management Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

OPR, MNRL-S, FFL

### **Introduction**

The Landlord filed an Application for Dispute Resolution on January 19, 2022 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 19, 2022.

Both parties attended the telephone conference call hearing. I informed the parties of the hearing format and provided the opportunity for them to ask questions.

### **Preliminary Matter – disclosure**

The Landlord forwarded notice of this hearing to the Tenant via registered mail. As shown by the postal receipt provided by the Landlord in their evidence, this was on February 4, 2022. This included the evidence they prepared with their Application in January 2022. The Tenant confirmed they received these documents.

The Landlord relied on a more recent rent ledger for this rental unit, system-generated on March 24, 2022. They did not disclose this to the Tenant; however, the Tenant was made aware of its existence in the hearing. As provided for below, this document was the source of the Landlord’s knowledge on the current rent balance which was the subject of focused discussion in the hearing.

The Landlord also provided a document updated to April 22 titled “Ledger Summary”. This document did not receive consideration in the hearing and forms no part of the evidence because it was not disclosed to the Tenant in advance.

The Landlord confirmed they received the Tenant's prepared evidence via registered mail in due course for this hearing.

### Issues 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

The parties spoke to the basic terms of the tenancy agreement, a copy of which the Landlord provided as evidence. The Tenant signed the agreement on August 16, 2004 for the tenancy starting on September 1, 2004. The rent at that time was \$1,050, and over the course of the tenancy the rent amount increased to \$1,632.31, and then more recently in January 2022 to \$1,656.79. These increases over time are shown in the ledger dated January 18, 2022 which was disclosed to the Tenant.

The Landlord provided a copy of the 10-Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10-Day Notice"), issued on October 1, 2021. This document gave the move-out date of October 22, 2021. There was no method of service indicated on page 2. The reason for ending the tenancy, as provide for on page 2 of 3, is the Tenant failing to pay the amount of \$1,300 on October 1, 2021.

In the hearing the Landlord explained that this form is machine-generated and then sent via regular mail to the Tenant. The Landlord provided a separate completed form, the Proof of Service that they signed and dated on October 7, 2021. Page 1 has the Landlord's indication that they left a copy in the mailbox or mail slot at the address where the Tenant resides. In the hearing they confirmed this "mail box/mail slot" indication is the closest term available for sending the 10-Day Notice via regular mail.

In the hearing, the Tenant stated they did not receive a copy of this 10-Day Notice via regular mail. They provided a Statutory Declaration stating the same, notarized on April 7, 2021.

The Tenant also pointed out their observation that there was a contra-indication on the Notice of Dispute Resolution which contains the information provided by the Landlord on their Application. For the data on the 10-Day Notice, that document contains the Landlord's indication that the 10-Day Notice was sent to the Tenant via registered mail. The Tenant stated this plainly in the hearing that they did not receive registered mail from the Landlord at that time, and their Statutory Declaration contains the same statement.

The Landlord acknowledged this error and re-stated that they sent the 10-Day Notice via regular mail in October 2021.

The Tenant explained again that the only time they received the 10-Day Notice was as part of the Landlord's prepared documentary evidence for this hearing. The Landlord queried whether this meant it was thus served to the Tenant for the purposes of ending the tenancy.

In the interim period after October 1, 2021 the Tenant was paying rent amounts to the Landlord, though not on the 1<sup>st</sup> of each month. They stated they were not disputing the staggered payments as shown in the Landlord's ledger. They candidly spoke to the difficult past couple of years it had been; however, they maintained that they honestly intended to pay the rent each month and had not been neglecting that obligation for the place where they live.

To this, the Landlord queried why the Tenant had not entered some sort of payment plan when it was announced to all tenants that the Landlord would work with them in these difficult times. The Tenant did not know that was an option, and thus far they were not aware of any objection from the Landlord about staggered payments they were providing. The Tenant's notion of common law is that such payments, being accepted and with no indication to the contrary, count toward proper rent amounts.

The Landlord presented that the outstanding amount owing was \$5,609.47. The Tenant stated they provided a \$500 payment to the Landlord on April 15. To verify this the Landlord checked their system during the hearing and that payment had not registered. Taking it on good faith, and with the Tenant's affirmation of their testimony, the Landlord accepted that a \$500 payment was made on that date, and this reduced the balance

owing by that amount, to \$5,109.47. The Landlord stated that the \$100 Application for this filing fee was also included in the balance; reducing that amount accordingly for the purposes of accurately determining rent amounts owing, the balance is \$5,009.47. This number was re-stated several times to the Tenant 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 October 7, 2021 for a rent amounts owing for that same calendar month.

I order this 10-Day Notice is of no effect because the Landlord could not prove service to the Tenant. The Landlord provided contradictory evidence where they indicated it was left in the mailbox or mail slot at the address where the person resides on the Proof of Service document; yet stated in the hearing the system-generated document was delivered by regular mail. Further, the Notice of Dispute Resolution has the Landlord's indication it was sent via registered mail. These modes of delivery have different considerations for when they are deemed to have been received as per s. 90 of the *Act*, affecting the timeline in which a tenant may challenge a landlord's attempt at ending the tenancy.

The Tenant clarified in the hearing they did not receive the 10-Day Notice. I find this was the case and find as fact that the Landlord did not serve the 10-Day Notice to the Tenant as required for an end to the tenancy being a legally valid process.

The Landlord queried whether they could then rely on service via their evidence package for this hearing, and then re-apply for an Order of Possession in line with that; however, I find this is fundamentally unfair to the Tenant with regard to the strict legislated timelines set out in the *Act* (and on the 10-Day Notice document itself) where a Tenant has 5 days after service to apply for dispute resolution against it. If service is affected *after* a landlord applies for dispute resolution, then one of the fundamental rights of a tenant to challenge that notice – as set out in the *Act* – is negated.

The *Act* s. 88(c) does give authority for a landlord to serve a 10-Day Notice via ordinary mail; however, this requires proof that a tenant received the document. There are other modes of service in place that provide more certainty: registered mail, in-person service, or attesting with a witness that a copy was left at the address. The Landlord here is not wrong for using regular mail; however, the difficulty is with having to prove the Tenant received the document. The Tenant in the hearing stated directly they did not receive it, and the Landlord has not overcome the burden to show service was definitively accomplished.

I also find as fact that the Tenant did not dispute the 10-Day Notice within the timeframe of 5 days after they received it. This increases the weight of the Tenant's statement that they did not receive it. Without evidence showing service as fact, I find on a balance of probabilities that the Tenant did not receive the 10-Day Notice. The Landlord seeks an Order of Possession because of this 10-Day Notice; however, without proof of service, I dismiss this portion of the Landlord's Application, without leave to reapply.

The Tenant dutifully and notably accepted the current ledger of the Landlord as being accurate and spoke candidly about their fullest efforts to make sure the rent was paid. In this regard, I note the long-standing tenancy in place here with no evidence the Tenant had not made payments or otherwise shirked that duty in the past. I accept that they fully intend to cover the full amounts of rent owing, and pledge to work with the Landlord to give effect to a payment plan. This requires communication with the on-site property manager, as provided by the Landlord in the hearing.

I find the Tenant now is aware of the current balance, being \$5,009.47. I have no reason to doubt the Landlord's own accounting in this matter, with incremental payments made by the Tenant showing up in the ledger. I award the outstanding balance to the Landlord by way of Monetary Order, and accept the parties will work together to give effect to a payment plan. Given that the tenancy is not ending, I make no provision for the Landlord to apply the security deposit against the outstanding amount owing. This is \$5,009.47, reflecting accumulating rent amounts from approximately October 2021 onwards.

The *Act* s. 72 grants me the authority to order the repayment of a fee for the Application. As the Landlord was successful in their monetary claim, I find they are entitled to recover the filing fee from the tenants.

Conclusion

For the reasons outlined above, I order that the 10-Day Notice issued on October 7, 2021 is cancelled. There is no order of possession issued to the Landlord and the tenancy will continue.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of \$5,109.47. I provide the Landlord with this Order and they must serve the Tenant in compliance with the *Act* as soon as possible. Should the Tenant fail to comply with this Order, the Landlord may file this Order in the Small Claims Division of the Provincial Court where it will be enforced as an Order of that Court.

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, 2022

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Residential Tenancy Branch