



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOMBARDY MANAGEMENT  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenant.

The landlord's agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were served, by registered mail sent on March 18, 2022, Canada post tracking numbers were provided as evidence of service. The agent stated that the Canada Post tracking history show that it was successfully delivered to the tenant on April 1, 2022.

I find that the tenants have been duly served in accordance with 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?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### Background and Evidence

The tenancy began on June 1, 2021. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The landlord's agent testified that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on March 3, 2022, by posting to the door of the rental unit.

The landlord's agent testified that on March 3, 2022, the tenant had rent arrears totalling \$5,600.00 which had started to accumulate in October 2021. The agent stated that the tenant had not paid any rent for October, November, and December 2021 and had failed to pay rent for January, February and March 2022. The agent stated that they did receive a \$400.00 payment in January 2022. The landlord stated the rent owed on March 3, 2022, was the amount of \$5,600.00 which was written in the Notice.

The landlord's agent testified that on March 18, 2022, the tenant paid the amount of \$1,000.00 towards arrears, leaving a balance owed of \$4,600.00

The landlord's agent testified that the tenant did not pay the balance of \$4,600.00 in rent arrears, and did not pay rent for April, May and June 2022 increasing the amount owed to \$7,600.00; however, in May 2022 they received a \$300.00 and June a \$500.00 payment. The landlord stated that the tenant currently owes the total amount of unpaid rent in the amount of \$6,800.00.

The landlord seeks an order of possession and a monetary order for the unpaid rent.

### Analysis

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

I accept the evidence of the landlord's agent that the tenant was served with the Notice, for non-payment of rent on March 3, 2022, by posting to the door of the rental unit. I find the tenant was deemed served on March 6, 2022, three days after it was posted..

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 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.

In this case, I have reviewed the Notice, the Notice is completed in the proper form. While I accept the landlord did not write the due date of the rent listed in the Notice. However, I find the tenant had to have know that this was for past rent arrears which was due on the 1<sup>st</sup> day of each month. Therefore, I find it appropriate to amend the Notice by adding the date of March 1, 2022, for the rent due, pursuant to section 68 of the Act.

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 accept the evidence of the landlord's agent that as of todays date, June 28, 2022, the tenant had accumulated a balance of unpaid rent in the amount of \$6,800.00. I find the tenant has breached section 26 of the Act, when they failed to pay their rent on the date it was due under their tenancy agreement. Therefore, I grant the landlord a monetary order for unpaid rent in the amount of **\$6,800.00**.

I find that the landlord has established a total monetary claim of **\$6,900.00** comprised of unpaid rent, and the \$100.00 fee paid by the landlords for this application.

I order that the landlord retain the security deposit of \$500.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the balance due of **\$6,400.00**. This order may be filed in the Provincial Court (Small Claims) 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 may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: June 28, 2022

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Residential Tenancy Branch