



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Atira Property Management Inc. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL-S, FFL

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On March 2, 2022 the landlord applied for:

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated February 14, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent, requesting to retain a security and/or pet damage deposit; and
- the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord testified they served the Notice of Dispute Resolution Proceeding (NDRP) on the tenant by registered mail on March 11, 2022, and their evidence by registered mail on May 17, 2022. The tenant confirmed she received the NDRP and evidence, and that she had not submitted or served any responsive evidence.

### Issues to be Decided

- 1) Is the landlord entitled to an order of possession?
- 2) Is the landlord entitled to a monetary order for unpaid rent?
- 3) Is the landlord entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began January 1, 2020; rent is \$1,100.00, due on the first of the month; and the tenant paid a security deposit of \$1,100.00, which the landlord still holds.

A copy of the 10 Day Notice is submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The landlord testified the 10 Day Notice was served on the tenant by registered mail on February 14, 2022, and the tenant confirmed receiving it on an unknown date. The tenant confirmed that she did not apply to dispute the Notice.

The reason indicated on page 2 of the 10 Day Notice is that the tenant has failed to pay rent in the amount of \$8,800.00, due on July 1, 2021.

The landlord testified that the tenant now owes unpaid rent as follows:

Month	Rent	Rent paid	Monthly outstanding
July 2021	\$1,100.00	\$0.00	\$1,100.00
August 2021	\$1,100.00	\$0.00	\$1,100.00
September 2021	\$1,100.00	\$0.00	\$1,100.00
October 2021	\$1,100.00	\$0.00	\$1,100.00
November 2021	\$1,100.00	\$0.00	\$1,100.00
December 2021	\$1,100.00	\$0.00	\$1,100.00
January 2022	\$1,100.00	\$0.00	\$1,100.00
February 2022	\$1,100.00	\$0.00	\$1,100.00
March 2022	\$1,100.00	\$0.00	\$1,100.00
April 2022	\$1,100.00	\$0.00	\$1,100.00
May 2022	\$1,100.00	\$0.00	\$1,100.00
June 2022	\$1,100.00	\$0.00	\$1,100.00
<b>Total</b>			<b>\$13,200.00</b>

The tenant confirmed the landlord's testimony regarding rent owing. The landlord has provided documentation in support of their testimony on outstanding rent.

The tenant testified that in early April 2022 she had got in touch with the landlord, explaining that she was trying to come up with the money to catch up on the unpaid rent.

The tenant testified that her co-tenant had previously passed away in the rental property, and that the remaining tenant and the landlord had had about five meetings since then. The tenant testified that they did a walkthrough of the property with the landlord last July. The tenant testified she had sent the landlord some receipts for repairs she had done, and that the landlord had indicated they would follow up, but did not.

The tenant testified that the property has a mould issue and is in need of repairs.

The tenant testified that some months she has had the rent money, but has withheld it because repairs were not done by the landlord.

### Analysis

Section 46(4) of the Act provides that upon receipt of a 10 Day Notice, the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I find that the 10 Day Notice is deemed received by the tenant on February 19, 2022, five days after being mailed, in accordance with sections 88 and 90 of the Act.

I find that the landlord's 10 Day Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date of the notice, states the reasons for ending the tenancy, and is in the approved form. I accept that the 10 Day Notice was served in response to unpaid rent from July 2021 through February 2022, and that the due date of July 1, 2021 reflects the date of the first month of rent arrears.

I find that the tenant has failed to file an application for dispute resolution within 5 days of February 19, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ends on the corrected effective date of the 10 Day Notice, March 1, 2022, and must vacate the rental unit.

In accordance with section 55 of the Act, I find that the landlord is entitled to an order of possession and a monetary award for outstanding rent in the amount of \$13,200.00.

As the landlord testified that the tenant still occupies the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, June 10, 2022.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the landlord is successful in their application, I

order the tenant to pay the \$100.00 filing fee the landlord paid to apply for dispute resolution.

In accordance with section 72 of the Act, I allow the landlord to retain \$1,100.00 of the tenant's security deposit in partial satisfaction of the amount owing.

I find the landlord is entitled to a monetary order as follows:

Outstanding rent	\$13,200.00
Filing fee	\$100.00
Security deposit	-\$1,100.00
<b>Owed to landlord</b>	<b>\$12,200.00</b>

### Conclusion

The landlord's application is granted.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant.

The landlord is granted a monetary order in the amount of \$12,200.00.

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: June 14, 2022

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Residential Tenancy Branch