



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL R.E.S  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **OPR, MNRL-S, FFL**

### **Introduction**

This hearing dealt with an application filed by the landlord pursuant the *Residential Tenancy Act* (the “Act”) for:

- An order of possession for unpaid rent pursuant to sections 46 and 55;
- A monetary order for unpaid rent and authorization to withhold a security deposit pursuant to sections 67 and 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenant did not attend the hearing although I left the teleconference hearing connection open throughout the hearing which commenced at 9:30 a.m. and concluded at 10:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing, represented by property manager, MR. (“landlord”). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord called the building manager, SK as a witness who gave the following testimony.

SK served the tenant with the Notice of Dispute Resolution Hearing package by taping it to the tenant’s door at 12:11 p.m. on April 22, 2022. Pursuant to sections 89 and 90 of the Act, the Notice of Dispute Resolution Hearing is deemed served on the tenant three days after it was posted to the door, or on April 25, 2022.

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of Possession and a monetary order?

Can the landlord recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement was provided as evidence. The tenancy began on August 1, 2018, with rent set at \$592.00 per month payable on the first day of the month. A security deposit of \$296.00 was collected from the tenant which the landlord continues to hold.

The landlord testified that he served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities by registered mail on March 3, 2022. The tracking number for the mailing is recorded on the cover page of this decision. A copy of the notice was provided as evidence. It states the tenant failed to pay \$1,243.60 in rent that was due on March 1, 2022. A copy of the landlord's ledger was provided, showing how this amount was arrived at. The landlord testified that the tenant did not pay the amount shown as owing on the notice to end tenancy within 5 days of receiving the notice and did not file an application to dispute the notice. The landlord acknowledges receiving a partial payment of \$200.00 on March 10<sup>th</sup>, and the landlord provided the tenant with a receipt indicating the money was accepted for use and occupancy only.

The landlord testified that the tenant currently owes \$2,738.60 in rent and the landlord seeks to increase the amount sought on his monetary order.

### Analysis

Pursuant to section 55(2)(b) of the Act, a landlord may request an order of possession of a rental unit by making an application for dispute resolution if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Pursuant to section 55(4), In the circumstances described above, the director may, without any further dispute resolution process under Part 5, grant an order of possession, and if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In the case before me, I find the tenant was deemed served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities five days after it was sent by registered mail, or March 8, 2022, pursuant to sections 88 and 90 of the Act. The tenant did not file an application to dispute the landlord's notice to end tenancy within five days as required under section 46 of the Act. Consequently, the tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the notice, or March 19, 2022. As the tenant has not yet vacated the premises, I find that the

landlord is entitled to an Order of Possession effective 2 days after service pursuant to sections 46(5) and 55.

I find the tenant was obligated to pay rent in the amount of \$592.00 per month and failed to do so from March 1<sup>st</sup> onward, except for the single \$200.00 payment made on March 10<sup>th</sup>. I accept the landlord's undisputed testimony that the tenant is now in arrears in the amount of \$2,738.60 and I award the landlord a monetary order in that amount. I have allowed the landlord to amend his claim for additional rental in accordance with Rule 4.2 of the Residential Tenancy Branch Rules of Procedure as the tenant could reasonably expect the amendment.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The landlord continues to hold the tenant's security deposit of \$296.00. In accordance with the offsetting provision of section 72, I order the landlord to retain the tenant's entire security deposit in partial satisfaction of the monetary order.

Item	Amount
Rental arrears	\$2,738.60
Filing fee	\$100.00
Less security deposit	(\$296.00)
<b>Total</b>	<b>\$2,542.60</b>

#### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**.

I award the landlord a monetary order in the amount of **\$2,542.60**.

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 02, 2022

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Residential Tenancy Branch