



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AGE CARE INVESTMENTS LTD DBA AGE CARE HARMONY  
COURT and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPU-DR, MNU-DR, 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 January 20, 2022 the landlord applied for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 31, 2021 (the 10 Day Notice);
- a monetary order for unpaid rent and/or utilities, having issued the 10 Day Notice; and
- the filing fee.

The hearing was attended by the landlord's representatives, but not the tenant. 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) and evidence on the tenant in person on February 28, 2022 at 12:20 p.m. Based on the landlord's affirmed undisputed testimony, I find the landlord served the tenant in accordance with section 89 of the Act.

### 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 landlord provided the following particulars regarding the tenancy. On September 21, 2021 the tenant moved into a rental unit in the property, as noted on the cover page of this decision. Rent in that unit was \$2,635.00 a month. On October 26, 2021, the tenant moved into the subject rental unit. Rent in the subject rental unit is \$3,075.00, due on the first of the month, and the tenant paid a security deposit of \$1,537.50, which the landlord still holds.

A copy of the amended tenancy agreement is submitted as evidence. It notes the change of unit and corresponding change of rent, though the amendment states that the unit and rent will change as of "Nov 1<sup>st</sup>", not October 26, 2021, as stated by the landlord.

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 in person on December 31, 2021; a witnessed proof of service form was submitted as evidence.

The reason indicated on page 2 of the 10 Day Notice is that the tenant has failed to pay rent in the amount of \$8,469.09, due on January 5, 2022. When I asked the landlord how they came to the amount of \$8,469.09, the landlord testified that was the balance owing on the account statement at the end of December. When I asked the landlord about the January due date, she submitted they had given the tenant a few extra days to pay the outstanding amount.

The landlord provided evidence on charges and payment during the tenancy as follows:

| Unit                | Month                 | Rent       | Rent paid  | Monthly or period outstanding |
|---------------------|-----------------------|------------|------------|-------------------------------|
| First unit          | September 21-30, 2021 | \$866.30   | \$1,039.56 | -\$173.26                     |
|                     | October 1-26, 2021    | \$2,165.75 | \$0.00     | \$2,165.75                    |
| Second/current unit | October 26-31, 2021   | \$606.60   | \$0.00     | \$606.60                      |
|                     | November 2021         | \$3,075.00 | \$0.00     | \$3,075.00                    |
|                     | December 2021         | \$3,075.00 | \$0.00     | \$3,075.00                    |
|                     | January 2022          | \$3,075.00 | \$0.00     | \$3,075.00                    |
|                     | February 2022         | \$3,075.00 | \$0.00     | \$3,075.00                    |
|                     | March 2022            | \$3,075.00 | \$0.00     | \$3,075.00                    |
|                     | April 2022            | \$3,075.00 | \$0.00     | \$3,075.00                    |

|              |          |            |        |                    |
|--------------|----------|------------|--------|--------------------|
|              | May 2022 | \$3,075.00 | \$0.00 | \$3,075.00         |
| <b>Total</b> |          |            |        | <b>\$24,124.09</b> |

Copies of the monthly financial statements provided to the tenant by the landlord are submitted as evidence, along with a Direct Request Worksheet.

The landlord submitted that the tenant is being supported by the health authority's home and community care, and that the Public Guardian and Trustee (PGT) is reviewing the tenant's situation, as the tenant "is struggling with how to look after her finances." A March 10, 2022 letter from the PGT is submitted as evidence.

### Analysis

The landlord testified that the tenant moved into the subject unit on October 26, 2021, but the amended tenancy agreement notes that the change occurring on November 1. Based on the affirmed undisputed testimony of the landlord, and the financial documentation submitted as evidence, I find the move took place on October 26, 2021, and accept that the unit change date of November 1 indicated on the amended tenancy agreement is a minor record-keeping oversight.

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 landlord served the 10 Day Notice on the tenant in person on December 31, 2021, in accordance with section 88 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 reason for ending the tenancy, and is in the approved form.

I accept that the 10 Day Notice was issued for rent owing up to and including December 1, 2021, and that the landlord referenced January 5, 2022 with the intention of providing the tenant with additional time to pay the amount owing.

I find that the tenant has failed to file an application for dispute resolution within 5 days of December 31, 2021, 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 ended on the corrected effective date of the 10 Day Notice, January 10, 2022, and must vacate the rental unit.

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, May 31, 2022.

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 \$24,124.09.

Based on the evidence before me, I'm satisfied that a tenancy was established on September 21, 2021, and that the tenant moved units within the property on October 26, 2021. Therefore, I find it reasonable to award the landlord the unpaid rent for both the tenant's initial and current rental units. I find it would be unreasonable to require the landlord to reapply to recover the unpaid rent for the unit occupied by the tenant September 21–October 26, 2021.

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 \$1,537.50 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        | \$24,124.09        |
| Filing fee              | \$100.00           |
| Security deposit        | -\$1,537.50        |
| <b>Owed to landlord</b> | <b>\$22,686.59</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 \$22,686.59.

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 13, 2022

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Residential Tenancy Branch