



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

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

### **Introduction**

This hearing was reconvened as a result of the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a Monetary Order for unpaid rent pursuant to section 55 and 67;
- authorization to keep the Tenants' security and pet damage deposits under section 38; and
- authorization to recover the filing fee for the Application from the Tenants pursuant to section 72(1).

The original hearing of this application was held on November 26, 2021 ("Original Hearing"). Two agents of the Landlord ("LM" and "TR") attended the Original Hearing. Neither of the Tenants attended the Original Hearing even though I left the teleconference hearing connection open until 10:37 am in order to enable the Tenants to call into the teleconference of the Original Hearing scheduled for 9:30 am. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding for the Original Hearing ("Original NDRP"). I also confirmed from the teleconference system that LM, TR and I were the only ones who had called into the teleconference for the Original Hearing. LM and TR were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses at the original hearing.

I was dissatisfied with the accounting for the rent claimed by the Landlord at the Original Hearing. Pursuant to Rule 7.8 of the *Residential Tenancy Branch Rules of Procedure* ("RoP"), I adjourned the hearing ("First Adjourned Hearing") and issued a decision dated December 10, 2021 ("First Interim Decision"). The First Interim Decision stated that Landlord was required to provide a revised ledger for the Tenants' rental payments and

the Tenants were permitted to provide relevant evidence to respond to the updated ledger provided by the Landlord. The First Interim Decision, and Notices of Dispute Resolution Proceeding for the First Adjourned Hearing ("First Adjourned NDRP") scheduled for March 25, 2022 were served on the parties by the Residential Tenancy Branch ("RTB"). LM attended the First Adjourned Hearing. Neither of the Tenants attended the First Adjourned Hearing even though I left the teleconference hearing connection open until 11:51 am in order to enable the Tenants to call into the teleconference for the First Adjourned Hearing scheduled for 11:00 am. I confirmed that the correct call-in numbers and participant codes had been provided in the First Adjourned NDRP. I also confirmed from the teleconference system that LM and I were the only ones who had called into the teleconference for the First Adjourned Hearing. LM was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses at the original hearing.

I was again dissatisfied with the accounting for the rent claimed by the Landlord at the First Adjourned Hearing. Pursuant to Rule 7.8 of the RoP, I adjourned the hearing ("Second Adjourned Hearing") and issued a decision dated April 11, 2022 ("Second Interim Decision"). The Second Interim Decision stated that Landlord was required to provide another revised ledger for the Tenants' rental payments and the Tenants were permitted to provide relevant evidence to respond to the updated ledger provided by the Landlord. The Second Interim Decision, and Notices of Dispute Resolution Proceeding for the Second Adjourned Hearing ("Second Adjourned NDRP"), scheduled for July 2, 2022 were served on the parties by the RTB. LM attended the Second Adjourned Hearing. Neither of the Tenants attended the Second Adjourned Hearing even though I left the teleconference hearing connection open until 11:48 am in order to enable the Tenants to call into the teleconference for the Second Adjourned Hearing scheduled for 11:00 am. I confirmed that the correct call-in numbers and participant codes had been provided in the Second Adjourned NDRP. I also confirmed from the teleconference system that LM and I were the only ones who had called into the teleconference for the Second Adjourned Hearing. LM was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses at the original hearing.

At the Original Hearing, LM testified the Original NDRP and the Landlord's evidence ("Original NDRP Package") were served on each of the two Tenants by separate registered mailings on August 23, 2021. LM provided two Canada Post tracking numbers confirming service of the Original NDRP Package on each of the Tenants. I find that Original NDRP Package was served on each of the Tenants in accordance with sections 88 and 89 of the Act. Pursuant to section 90 of the Act, I find the Tenants were deemed to have been served with the Original NDRP Packages on August 28, 2021.

LM stated that the Tenants did not serve the Landlord with any evidence for the Original Hearing, the First Adjourned Hearing or the Second Adjourned Hearing.

### Issues to be Decided

Is the Landlord entitled to:

- an order of possession?
- a monetary order for unpaid rent?
- apply the security deposit toward the unpaid rent?
- recover the filing fee for the Application from the Tenant?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

LM testified the tenancy commenced on September 1, 2020, for a fixed term ending August 31, 2021, and continued thereafter on a month-to-month basis, with rent of \$2,203.00 payable on the 1<sup>st</sup> day of each month. LM stated the Tenants were required to pay a security deposit of \$1,101.50 and a pet damage deposit of \$1,101.50 by July 29, 2020. LM stated the Tenants paid the security and pet damage deposits and the Landlord was holding the deposits on behalf of the Tenants. LM stated the Tenants vacated the rental unit on August 31, 2021.

LM stated a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated July 9, 2021 ("10 Day Notice") was served in the Tenants' mailbox on July 9, 2021 by LM. LM stated the effective date for move-out was July 24, 2021. LM submitted a signed Proof of Service on Form RTB-34 to corroborate her testimony. TR stated she witnessed LM serve the 10 Day Notice in the Tenants' mailbox. I find the 10 Day Notice was served by the Landlord on the Tenants in accordance with section 88 of the Act.

At the Second Adjourned Hearing, LM stated that the Tenants had rental arrears of approximately \$12.00 on March 31, 2022. LM stated that, as the \$12.00 had accrued over a period of months, the Landlord was not seeking recover those arrears. LM stated the 10 Day Notice incorrectly stated the Tenants owed \$4,706.00 as of July 1, 2021. LM

submitted an updated ledger for the rental unit and stated the Tenants owed \$3,551.00 as of July 1, 2021 calculated as follows:

Date	Rent Owed	Paid	Balance
01-Apr-21	\$2,203.00		\$2,203.00
01-May-21	\$2,203.00		\$4,406.00
07-May-21		\$200.00	\$4,206.00
08-May-21		\$158.00	\$4,048.00
10-May-21		\$150.00	\$3,898.00
22-May-21		\$1,450.00	\$2,448.00
24-May-21		\$200.00	\$2,248.00
01-Jun-21	\$2,203.00		\$4,451.00
03-Jun-21		\$1,900.00	\$2,551.00
04-Jun-21		\$250.00	\$2,301.00
11-Jun-21		\$330.00	\$1,971.00
12-Jun-21		\$123.00	\$1,848.00
01-Jul-21	\$2,203.00		\$4,051.00
28-Jul-21		\$500.00	\$3,551.00
<b>Total</b>	<b>\$8,812.00</b>	<b>\$5,261.00</b>	<b>\$3,551.00</b>

LM stated the Tenants owed a further \$2,203.00 for unpaid rent or compensation for overholding the rental unit until August 31, 2022, being the date the Tenants vacated the rental unit. LM stated the Landlord was seeking to increase the Landlord's claim for rental arrears so as to include an additional \$2,203.00 for compensation.

LM stated the Landlord was unaware of the Tenants making any application for dispute resolution to dispute the 10 Day Notice.

### Analysis

#### **1. Landlord's Claim for Order of Possession**

Sections 26(1) and 46(1) through 46(5) of the Act state:

- 26(1) *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.

- 46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.
- (2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.
- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
  - (b) *must vacate the rental unit to which the notice relates by that date.*

[emphasis added in italics]

At the Original Hearing, the undisputed testimony of LM was the Landlord served in the 10 Day Notice in the Tenants' mailbox on July 9, 2021. Pursuant to section 90 of the Act, the Tenants were deemed to have received the 10 Day Notice on July 12, 2021. Pursuant to section 46(4) of the Act, the Tenants had 5 days, or July 19, 2021, being the next business day after the 5-day dispute period, within which to dispute the 10 Day Notice. The records of the RTB do not disclose the Tenants made any application for dispute resolution. LM stated the Landlord was not aware of the Tenants disputing the 10 Day Notice.

As the Tenants did not dispute the 10 Day Notice, section 46(5) of the Act stipulates that the Tenants were conclusively presumed to have accepted that the tenancy ended on the effective date of 10 Day Notice, being July 24, 2021.

The undisputed testimony of LM at the Second Adjourned Hearing was the Tenants had rental arrears of \$3,551.00 as of July 1, 2021. LM submitted an updated ledger for the Tenants' rental unit to corroborate her testimony. Based on the undisputed testimony of LM, I find the Landlord has established, on a balance of probabilities, the Tenants owed the Landlord \$3,551.00 as of July 1, 2022. Pursuant to section 26(1) of the Act, the

Tenants were responsible for paying the rent when it is due. Based on the above, I find the 10 Day Notice was issued for a valid reason.

55(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) 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;
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c.1) the tenancy agreement is a sublease agreement;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

[...]

- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],
  - (a) grant an order of possession, and
  - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

I have reviewed the 10 Day Notice and find it complies with the section 52 form and content requirements. Pursuant to section 46(5)(1), the tenancy ended on the effective date of the 10 Day Notice, being July 24, 2021. As the Tenants have vacated the rental unit, I find the Landlord does not require an Order of Possession pursuant to section 55(4)(a) of the Act.

## **2. Monetary Order for Unpaid Rent:**

As noted above, I have found that the Tenants had rental arrears of \$3,551.00 as of July 1, 2021 and the tenancy ended on the effective date of the 10 Day Notice on July 24, 2021. The Landlord also sought rent for the month of August 2021 in the amount of \$2,203.00. Subsection 57(3) of the Act states:

- 57(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

*Residential Tenancy Policy Guideline 3* (“PG 3”) provides guidance, among other things, on situations where a landlord may seek unpaid rent or, where the tenancy has ended pursuant to conclusive presumption under section 46(5)(a) of the Act. PG 3 states in part:

B. Overholding tenant and compensation

Section 44 of the RTA (section 37 of the MHPTA) sets out when a tenancy agreement will end. *A tenant is not liable to pay rent after a tenancy agreement has ended. If a tenant continues to occupy the rental unit or manufactured home site after the tenancy has ended (overholds), then the tenant will be liable to pay compensation for the period that they overhold pursuant to section 57(3) of the RTA (section 50(3) of the MHPTA). This includes compensation for the use and occupancy of the unit or site on a per diem basis until the landlord recovers possession of the premises.* In certain circumstances, a tenant may be liable to compensate a landlord for other losses associated with their overholding of the unit or site, such as for loss of rent that the landlord would have collected from a new tenant if the overholding tenant had left by the end of the tenancy or for compensation a landlord is required to pay to new tenants who were prevented from taking occupancy as agreed due to the overholding tenant’s occupancy of the unit or site.

[emphasis in italics added]

Accordingly, the landlord must seek compensation where the tenant overholds the rental unit after the tenancy has ended pursuant to subsection 57(3) of the Act. In the Application, the Landlord made a claim for unpaid rent but did not make a claim to seek monetary compensation for the Tenants overholding the rental unit. As such, the Landlord is not entitled to seek rental arrears after the effective date of the 10 Day Notice. In these circumstances, the Landlord has the option of making an application for dispute resolution to seek compensation for the time the Tenants overheld the rental unit rental after the effective date of the 10 Day Notice as stated in PG 3.

As noted above, I have found the Tenant had rental arrears of \$3,551.00 as of July 1, 2021. Pursuant to section 55(4)(b) of the Act, I order the Tenants pay the Landlord \$3,551.00 in satisfaction of the rental arrears owed. Pursuant to section 72(2)(b), the Landlord may deduct the Tenants' security and pet damage deposits of \$2,203.00 from the rental arrears owed by the Tenants, leaving a balance of \$1,348.00.

### 3. Reimbursement of Landlord's Filing Fee

As the Landlord has been successful in the Application, I order that the Landlord may recover the \$100.00 filing fee for the Application from the Tenant pursuant to section 72(1) of the Act.

#### Conclusion:

I order the Tenants pay the Landlord \$1,448.00, representing the following:

Description	Amount
Rental Arrears for April through July 2021 inclusive	\$3,551.00
Landlord's Filing Fee for Application	\$100.00
Less Tenants' Security and Pet Damage Deposit	-\$2,203.00
<b>Total</b>	<b>\$1,448.00</b>

This Monetary Order must be served by the Landlord on the Tenants and may be enforced in Provincial Court.

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: July 24, 2022

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Residential Tenancy Branch