



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL, MNRL, OPR

### Introduction

The Landlord seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order of possession pursuant to s. 55 after issuing a 10-Day Notice to End Tenancy;
- A monetary order pursuant to s. 67 for unpaid rent; and
- Return of their filing fee pursuant to s. 72.

A.S. appeared as the Landlord. The Tenant did not appear, nor did someone appear on their behalf.

Pursuant to Rule 7.1 of the Rules of Procedure, the hearing began as scheduled in the Notice of Dispute Resolution. As the Tenant did not attend, the hearing was conducted in their absence as permitted by Rule 7.3 of the Rules of Procedure.

The Landlord affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The Landlord confirmed that she was not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord advised the Notice of Dispute Resolution and their evidence was served via registered mail sent on May 8, 2022. I was provided with a registered mail tracking number. The Landlord further advised that the application materials were sent to the subject rental unit and that the materials were returned to her.

Policy Guideline #12 states the following with respect to service via registered mail:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

The Landlord is entitled to serve their application materials under s. 89 of the *Act*. Policy Guideline #12 is clear that failing to pick up registered mail sent to the correct address does not impact the deemed service provisions of the *Act*. I find that pursuant to s. 89 of the *Act* that the Landlord served their application materials on the Tenant by way of registered mail. Pursuant to s. 90 of the *Act*, I deem that the Tenant received the Landlord's application materials on May 13, 2022.

#### Preliminary Issue – Landlord's Claim

The Landlord advised that the Tenant vacated the rental unit on May 28, 2022 and that they have taken back possession of the rental unit.

Based on the undisputed evidence of the Landlord, I find that the tenancy ended on May 28, 2022. Given that the Landlord has possession of the rental unit, issues pertaining to the 10-Day Notice to End Tenancy or the order of possession are no longer relevant. I dismiss the Landlord's claim under s. 55 of the *Act* for an order of possession without leave to reapply.

The Landlord seeks additional amounts of rent given the passage of time since filing their application. Such circumstances are explicitly contemplated by Rule 4.2 of the Rules of Procedure. Accordingly, I permit the amendment of the Landlord's application to seek the additional amount of unpaid rent as I find that it could be reasonable anticipated under the circumstances.

#### Issues to be Decided

- 1) Is the Landlord entitled to an order for unpaid rent?
- 2) Is the Landlord entitled to the return of their filing fee?

### Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit on August 1, 2019.
- Rent of \$2,300.00 was due on the first day of each month.
- No pet damage deposit or security deposit was paid by the Tenant.

I was advised that there is no written tenancy agreement. The Landlord testified that her son resided within the rental unit with the Tenant as co-tenants. I was told that the son and the Tenant were a couple but this ended and the son moved out while the Tenant remained within the rental unit.

The Landlord testified that the Tenant paid \$900.00 in rent in August 2021 such that \$1,400.00 was owed. The Landlord further testified that in September 2021 she agreed to a \$300.00 credit for rent due to work done by the Tenant at the rental unit. The Landlord seeks \$2,000.00 for September 2021. The Landlord finally testified that the Tenant did not pay rent at all from October 1, 2021 until when she moved out on May 28, 2021. The Landlord seeks the unpaid rent for those 8 months.

### Analysis

The Landlord seeks an order for unpaid rent.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Pursuant to s. 26(1) of the *Act*, a tenant must pay rent when it is due whether or not the landlord complies with the *Act*, the Regulations, or the tenancy agreement unless the *Act* grants the tenant the right to deduct all or a portion of the rent.

Based on the undisputed evidence of the Landlord, I find that the Tenant failed to pay rent in accordance with the tenancy agreement. The Tenant's failure to pay rent is both a breach of her obligation under the tenancy agreement to pay rent when it is due as well as her obligation under s. 26 of the *Act*. The Tenant's breach has resulted in the Landlord suffering from lost rental income, which could not have been mitigated as the Tenant continued to reside within the rental unit.

I accept the Landlord's undisputed evidence that the Tenant has failed to pay rent as follows:

Month	Rent Owed
August 2021	\$1,400.00
September 2021	\$2,000.00
October 2021	\$2,300.00
November 2021	\$2,300.00
December 2021	\$2,300.00
January 2022	\$2,300.00
February 2022	\$2,300.00
March 2022	\$2,300.00
April 2022	\$2,300.00
May 2022	\$2,300.00
<b>Total</b>	<b>\$21,800.00</b>

I find that the Landlord is entitled to an order for unpaid rent in the amount of \$21,800.00.

### Conclusion

The Landlord has established an order for unpaid rent in the amount of \$21,800.00.

The Landlord was successful in their application. Accordingly, I find that the Landlord is entitled to the return of its filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay \$100.00 to the Landlord for their filing fee.

Pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **\$21,900.00** to the Landlord, representing the combined total of the amounts awarded above (\$21,800.00 + \$100.00).

It is the Landlord's obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlord with the Small Claims Division of the Provincial Court and enforced as an order of that 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: August 24, 2022

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Residential Tenancy Branch