



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 458 EAST FIRST DEVELOPMENT  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-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 June 9, 2022 the landlord applied for:

- an order of possession for the rental unit, having issued a 10 Day Notice to End Tenancy, dated May 11, 2022 (the 10 Day Notice);
- a monetary order for unpaid rent, having issued the 10 Day Notice; 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 tenant confirmed he received the landlord's Notice of Dispute Resolution Proceeding (NDRP) and evidence, and that the tenant had not served or submitted responsive evidence.

### Preliminary Matter

#### *Settlement on Possession*

Pursuant to section 63 of the Act, if the parties settle their dispute during the dispute resolution proceeding, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties reached a resolution regarding possession of the rental unit. Both parties agreed to the following binding settlement term:

- 1) The tenant will vacate the rental unit by 7:00 p.m. on October 26, 2022.

Both parties testified at the hearing that they understood and agreed to the above term, free of any duress or coercion. Both parties testified that they understood and agreed that the above term will settle the possession aspect of their dispute. As the parties resolved this matter by agreement, I make no findings of fact or law with respect to the landlord's application for an order of possession.

In support of the above agreement, I grant the landlord an order of possession effective 7:00 p.m. on October 26, 2022.

#### Issues to be Decided

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

#### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began October 1, 2021; rent is \$2,800.00, due on the first of the month; and the tenant paid a security deposit of \$1,400.00, which the landlord still holds.

The tenant testified that the rental unit is still occupied, but they plan to move out in 2 days.

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 reason indicated on page 2 of the 10 Day Notice is that the tenant has failed to pay rent in the amount of \$3,805.00, due on March 1 to May 1, 2022.

The landlord testified the 10 Day Notice was served on the tenant by posting it to the door on May 11, 2022, and by registered mail, and that the landlord attempted to give it to an adult at the residence on May 11, 2022, but they would not accept it. The tenant testified that on May 11, 2022 he received the 10 Day Notice posted to the door, and received the Notice sent by registered mail on June 23, 2022.

The tenant testified he did not apply to dispute the 10 Day Notice.

The landlord and tenant agreed that that the tenant made rent payments as follows:

Month in 2022	Rent	Rent paid	Monthly outstanding
March	\$2,800.00	\$1,000.00	\$1,800.00
April	\$2,800.00	\$1,000.00	\$1,800.00
May	\$2,800.00	\$4,100.00	-1,300.00
June	\$2,800.00	\$0.00	\$2,800.00
July	\$2,800.00	\$0.00	\$2,800.00
August	\$2,800.00	\$0.00	\$2,800.00
September	\$2,800.00	\$0.00	\$2,800.00
October	\$2,800.00	\$0.00	\$2,800.00
<b>Total</b>			<b>\$16,300.00</b>

A Direct Request Worksheet is submitted in support, showing the rent owing and paid for March, April, and May 2022, and receipts are submitted for payments received after the service of the 10 Day Notice.

The tenant testified that the landlord had removed the door of the unit, had changed the locks, had removed the toilets, and that since August there were no appliances in the unit.

### Analysis

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

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.

Based on the tenant's testimony, I find that he received the 10 Day Notice on May 11, 2022, in accordance with section 88 of the Act. The tenant testified he did not apply to dispute the 10 Day Notice.

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, 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.

The landlord provided testimony on the rent payments made by the tenant, and the tenant did not dispute the landlord's testimony on rent.

In accordance with section 55(4)(b) of the Act, I find that the landlord is entitled to a monetary award for outstanding rent in the amount of \$16,300.00.

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 \$1,400.00 of the tenant's security deposit in partial satisfaction of the amount owing.

I find the landlord is entitled to a monetary order for \$15,000.00, as follows:

Outstanding rent	\$16,300.00
Filing fee	\$100.00
Security deposit	-\$1,400.00
<b>Owed to landlord</b>	<b>\$15,000.00</b>

### Conclusion

The parties settled on the issue of possession, agreeing that the tenant will vacate the rental unit by 7:00 p.m. on October 26, 2022.

In support of the settlement on possession, the landlord is granted an order of possession effective at 7:00 p.m. on October 26, 2022.

The landlord is granted a monetary order in the amount of \$15,000.00.

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: November 08, 2022

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Residential Tenancy Branch