



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DD ACQUISITIONS PARTNERSHIP C/O METCAP  
LIVING MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL-S, OPR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act) on June 14, 2022, seeking:

- A Monetary Order for unpaid rent;
- An Order of Possession as a result of an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice); Retention of the security deposit; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord S.E. (the Agent), who both provided affirmed testimony. The Tenant did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Agent was advised that pursuant to rule 6.10 of the Rules of Procedure, interruptions and inappropriate behavior would not be permitted and could result in limitations on participation, such as being muted, or exclusion from the proceedings. The Agent was asked to refrain from speaking over me and any other participants that may attend the hearing and to hold their questions and responses until it was their opportunity to speak. The Agent was also advised that personal recordings of the proceeding were prohibited under the Rules of Procedure and confirmed that they were not recording the proceedings.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As

the Tenant did not attend the hearing, I confirmed service of documents as explained below. The Agent provided affirmed testimony in the hearing that the Notice of Dispute Resolution Proceeding (NODRP) package, which includes the Application for Dispute Resolution and the Notice of Hearing, as well as the evidence package were sent to the Tenant on July 7, 2022, by registered mail. A copy of the registered mail receipt was provided in the evidence before me. During the hearing, the Agent checked the tracking information online for the registered mail stating that the first notice was left on July 8, 2022, that final notice was left on July 13, 2022, and that the package was returned to sender as unclaimed on July 27, 2022. The Agent stated that the registered mail was sent to the rental unit and that the Tenant resided in the rental unit at the time the registered mail was sent and when the notices were left, as the Tenant did not vacate the rental unit until August 2, 2022. As a result, I find that the Tenant was deemed served with the above noted documents on July 12, 2022, pursuant to section 90(a) of the Act.

Residential Tenancy Branch (Branch) records indicate that the NODRP was sent to the Landlord by e-mail on June 28, 2022. Despite the fact that the NODRP was not sent to the Tenant within the timeline set out under section 59(3) of the Act or rule 3.1 of the Rules of Procedure, I nevertheless find that it was deemed sufficiently served for the purposes of the Act on July 12, 2022, As it was deemed served more than three months in advance of the hearing, which I find provided the Tenant with ample opportunity to prepare for the hearing.

Rule 7.1 of the Rules of Procedure states that the dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator. I verified that the hearing information contained in the NODRP was correct, and I note that the Agent had no difficulty attending the hearing on time using this information. As the Agent and I attended the hearing on time and ready to proceed, and I was satisfied as set out above that the Tenant was deemed served with the NODRP for the purpose of the Act on July 12, 2022, I therefore commenced the hearing as scheduled at 11:00 A.M. on November 1, 2022, despite the absence of the Tenant, pursuant to rule 7.3 of the Rules of Procedure, which states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party. Although the teleconference remained open for the full duration of the 17-minute hearing, no one attended the hearing on behalf of the Tenant.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

At the request of the Agent, a copy of the decision and any orders issued in favor of the Landlord will be emailed to them at the email addresses provided at the hearing.

### Preliminary Matters

#### Preliminary Matter #1

The Agent stated the Tenant vacated the rental unit on August 2, 2022, and that as a result, they no longer require an Order of Possession. As a result, the hearing proceeded based only on the other matters claimed in the Application.

#### Preliminary Matter #2

I asked the Agent if the name listed in the Application was the full legal name for the Landlord and they stated that it was incomplete. The Agent provided me with the complete name, which is listed on the cover page of this decision.

### Issue(s) to be Decided

Is the Landlord entitled to recovery of unpaid rent?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retention of the security deposit?

### Background and Evidence

The fixed term tenancy agreement in the documentary evidence before me indicates that the fixed term commenced on January 1, 2022, and was set to end on January 31, 2023. It states that rent in the amount of \$1,747.00 is due on the first day of each month, and that a security deposit in the amount of \$873.50 was required. During the hearing, the Agent stated that the above noted terms for the tenancy agreement are correct and that the \$873.50 security deposit has already been returned to the Tenant.

The Agent stated that the Tenant vacated the rental unit on August 2, 2022, after having been served with the 10 Day Notice and that they currently owe \$7,861.50 in outstanding rent, plus \$100.00 for the filing fee.

### Analysis

Based on the uncontested documentary evidence and affirmed testimony before me for consideration, I am satisfied that a tenancy to which the Act applies existed between the parties. I also find that the Tenant was obligated to pay the monthly rent of \$1,747.00, on time and in full each month.

Based on the tenancy agreement and the Agent's affirmed and undisputed oral testimony, I find that the Tenant owes \$7,861.50 in outstanding rent. Although the ledger submitted appears to indicate that the \$7,861.50 in outstanding rent sought takes into account the Landlord's retention of the security deposit, at the hearing the Agent provided affirmed testimony that the security deposit has been returned to the Tenant and that the Tenant currently owes \$7,861.50 in outstanding rent (the \$7,961.50 shown on the ledger, less the \$100.00 charge for the filing fee). As the documentary evidence was submitted several months prior to the hearing, I therefore prefer the affirmed testimony provided by the Agent at the hearing, as it is more current.

As the Landlord was successful in their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 67 of the Act, I find that the Landlord is therefore entitled to a Monetary Order in the amount of \$7,951.50, and I order the Tenant to pay this amount to the Landlord.

### Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of \$7,951.50. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in 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: November 01, 2022

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Residential Tenancy Branch