



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This matter proceeded by way of an ex parte Direct Request Proceeding, pursuant to section 55(4) of the Residential Tenancy Act (the Act) and dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

On June 14, 2022, the landlord's application for dispute resolution was found to have been served on the tenants; The Canada Post tracking history shows that both named tenants "Refused" the documents and they were returned to the sender.

However, the Adjudicator determined this matter should be scheduled as a participatory hearing and the matter was to reconvene this day, October 20, 2022. The interim decision should be read in conjunction with this Decision.

On October 20, 2022, the landlord's property agent appeared, and I found an adjournment was appropriate and the matter was to reconvene on November 15, 2022. The interim decision should be read in conjunction with this Decision.

On November 15, 2022, the landlord's agent appeared. The agent testified that they complied with my interim Decision of October 20, 2022, and served the tenants by posting the documents to the door on October 21, 2022. I find the tenants were served in accordance with my Order.

### Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

### Background and Evidence

The tenancy began on January 1, 2022. Rent in the amount of \$4,000.00 was payable on the first of each month. A security deposit of \$2,00.00 was paid by the tenant.

The landlord's agent testified that when the tenancy agreement was entered into the tenants with the landlord they crossed out the names and inserted the name of a roofing company although they do not believe it is a limited company. However, they only had dealings with MS as a tenant.

The landlord's agent testified that on April 22, 2022, they served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued on April 22, 2022, by posting to the door. The agent stated that the tenant did make payments totaling the amount of \$3,500.00 by April 26, 2022; however, a balance of \$500.00 remained unpaid.

The landlord's agent testified that the tenant has failed to pay subsequent rent for May, June, July, August, September, October and November 2022.

The landlord's agent testified that the tenant does not respond to them, and someone is living in the premises; however, they have no idea who it is.

The landlord seeks an order of possession and a monetary order for unpaid rent in the total amount of \$28,500.00.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

In this case, the tenancy agreement is in the name of a roofing company, the roofing company is not listed as a limited, corporate or holding company. The tenant agreement has two tenants MW and MS listed at the end of the agreement.

I find on the balance of probability that this was an individual person or persons, as there is no evidence that leads me to believe that this was a registered company. MS was the person that the landlord had dealt with, until they cut-off all contact with the landlord and stopped paying rent.. Therefore, I find it more likely than not that MS is a tenant.

While MW is also likely a tenant. The landlord did not name them in their application. If the tenancy ends for one tenant ,all tenants and occupants under that agreement must vacate and any monetary order issued in the sole name of one tenant is an issue between the two tenants.

Based on the testimony of the landlord's agent, I find that the tenant was served with a notice to end tenancy for non-payment of rent on April 22, 2022, by posting to the door. I find the tenant was served in accordance with the Act.

The notice informed the tenant that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenant had five days to dispute the notice.

While the tenant paid a portion of rent in the amount of \$3,500.00, by April 26, 2022, the full amount owed was not paid. The tenant did not apply to dispute the notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. I find the tenancy legally ended on May 2, 2022, the effective date within the Notice.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

The tenant failed to pay the balance owed for April 2022 in the amount of \$500.00 and has failed to pay all subsequent rent due for seven (7) months (7 x \$4,000.00). I find the landlord is entitled to recover the unpaid rent pursuant to section 55 of the Act in the total amount of **\$28,500.00** from the tenant.

I find that the landlord has established a total monetary claim of **\$28,600.00** comprised of unpaid rent, and the \$100.00 fee paid by the landlords for this application.

I order that the landlord retain the security deposit of \$2,000.00 in partial satisfaction of the claim and I grant the landlord an order pursuant to section 67 of the Act, for the

balance due of **\$26,600.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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 15, 2022

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Residential Tenancy Branch