



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL-S

### Introduction

This hearing was scheduled to convene at 11:00 a.m. on November 10, 2022 by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

The landlord attended the hearing with another person to assist, and both gave affirmed testimony. However, the line remained open while the telephone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenants joined the call.

The landlord testified that the first-named tenant (RLW) was personally served with the Notice of Dispute Resolution Hearing package on September 2, 2022, and the other named tenant (JBW) does not reside in the rental unit and was not served.

I accept that testimony, and I dismiss the landlord's application with respect to the tenant (JBW) who was not served.

All evidence provided by the landlord has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- has the landlord established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was given in accordance with the *Residential Tenancy Act*?
- has the landlord established a monetary claim as against the tenant (RLW) for unpaid rent?

- should the landlord be permitted to keep the security deposit in partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this fixed-term tenancy began on March 6, 2021 and reverted to a month-to-month tenancy after March 5, 2022 and the tenant (RLW) still resides in the rental unit. Rent in the amount of \$1,500.00 is payable on the 6<sup>th</sup> day of each month. On March 3, 2021 the landlord collected a security deposit from the tenants in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in a single family home, and the landlord also resides on the rental property. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that on August 5, 2022 the tenant was personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and a copy has been provided for this hearing. It is dated August 5, 2022 and contains an effective date of vacancy of August 15, 2022 for unpaid rent in the amount of \$1,500.00 that was due on July 5, 2022. The tenant has not paid the rent and arrears have continued to accumulate. The tenant has not paid any rent for the months of July, August, September, October or November, 2022 and is in arrears the sum of \$7,500.00.

The landlord seeks an Order of Possession and a monetary order, and to keep the \$750.00 security deposit.

### Analysis

The *Residential Tenancy Act* states that a tenant must pay rent when it is due. If the tenant fails to do so, the landlord may end the tenancy by serving the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant has 5 days to pay the rent in full, in which case the Notice is of no effect, or dispute the Notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, I accept the undisputed testimony of the landlord that the tenant has not paid the rent and I have no application from the tenant disputing the Notice, and I find that the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord that the tenant is currently in arrears of rent the sum of \$7,500.00. I order that the landlord may keep the \$750.00 security deposit in partial satisfaction of the claim.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the landlord in the amount of \$6,850.00 ( $\$7,500.00 + \$100.00 = \$7,600.00 - \$750.00 \text{ security deposit} = \$6,850.00$ ).

### Conclusion

For the reasons set out above, the landlord's application as against the tenant (JBW) is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order the landlord to keep the \$750.00 security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlord as against the tenant (RLW) pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$6,850.00.

This order is final and binding and may be enforced.

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 10, 2022

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Residential Tenancy Branch