



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      OPR, MNRL-S, MNDCL-S, FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- authorization to retain all or a portion of the security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- an order of possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$6,050 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:44 pm in order to enable the tenant to call into the hearing scheduled to start at 1:30 pm. The landlord's owner ("**BD**") and his partner ("**AA**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that BD, AA, and I were the only ones who had called into the hearing.

BD testified he served the tenant with the notice of dispute resolution package and supporting documentary evidence via registered mail on July 14, 2022. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant is deemed served with these documents on July 19, 2022, five days after BD mailed them, in accordance with sections 88, 89, and 90 of the Act.

### **Preliminary Issue – Amendments of the Application**

On the application, the landlord listed its mailing address as the same address as the rental unit. BD testified that this was an error. The tenant's rental unit is unit 106 and the landlord's property manager's office address is unit 108 at the same street address. Unit 108 is listed as the landlord's address on the tenancy agreement and the 10 Day Notice to End Tenancy for Non-Payment of Rent (the "**Notice**"). BD asked that the application be amended to correct the address. I agreed to do so, as the tenant should have

reasonably known the address on the notice of dispute resolution was incorrect and that the landlord's mailing address was unit 108, not unit 106.

Additionally, at the outset of the hearing, BD clarified that the landlord's monetary claim was now slightly lower than what was originally claimed (the tenant had made a partial payment in July 2022). He specified that the landlord seeks a monetary order of \$4,650 consisting solely of the following rental arrears:

Description	Amount
July Arrears	\$450.00
August Arrears	\$1,050.00
September Arrears	\$1,050.00
October Arrears	\$1,050.00
November Arrears	\$1,050.00
<b>Total</b>	<b>\$4,650.00</b>

As the amount of the monetary order is now less than what the landlord originally sought, I do not find that the tenant would be prejudiced by such an amendment. Accordingly, I amend the landlord's application to reduce the amount of the monetary order sought to \$4,650.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$4,650;
- 3) recover the filing fee; and
- 4) retain the security deposit in partial satisfaction of the monetary orders made?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of BD, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting January 1, 2022. Monthly rent is \$1,050 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$525, which the landlord continues to hold in trust for the tenant.

BD testified that the tenant did not pay any rent on June 1, 2022. Accordingly, he served the tenant with the Notice by posting it on the door of the rental unit on June 7, 2022. The Notice specified arrears of \$1,050 and an effective date of June 17, 2022.

The tenant did not dispute the Notice within five days of being served with it, or at all.

The tenant did not pay rent when it was due on July 1, 2022. However, some point after July 1, 2022, the tenant paid the landlord all of June's rent and \$600 of July's rent. He testified that he has not received any further rent payment since then, and that the tenant currently owes \$4,650 in unpaid arrears.

### **Analysis**

I accept the undisputed testimony of BD in its entirety. Based on this testimony, and the tenancy agreement entered into evidence, I find that monthly rent was \$1,050 and was due on the first day of each month.

I accept BD's testimony that the tenant did not pay rent on June 1, 2022. Accordingly, I find that the tenant was \$1,050 in arrears as of June 7, 2022, when the Notice was served by posting it on the door of the rental unit. Per section 90 of the Act, it is deemed to have been served three days later (June 10, 2022).

I have reviewed the Notice and find that it complies with section 52 of the Act. I note that it does not include the landlord's name. However, this is not a requirement of section 52, and in any event, the Notice was signed by BD, whose name was written clearly, and listed the correct address for service of the landlord.

Section 46 of the Act states:

#### **Landlord's notice: non-payment of rent**

46(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

[...]

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

I find that the tenant ultimately paid June's rent sometime in July 2022. However, this payment does not cause the Notice to have no effect, as it was made outside the five-day period specified at section 46(4) of the Act.

Similarly, the tenant did not dispute the Notice in this five-day period, or at all.

Accordingly, I find that the tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of the Notice, June 20, 2022. The landlord is entitled to an order of possession.

I also accept BD's testimony that the tenant has only paid a portion of July's rent and no rent whatsoever for the months of August to November 2022, inclusive. I find that the tenant is currently \$4,650 in rental arrears. I order the tenant to pay the landlord this amount.

In light of the tenant's continued non-payment of rent, I find it appropriate for the order of possession to be effective two days after it is served on the tenant in accordance with the Act.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, it may recover the filing fee from the tenant.

Pursuant to section 72(2) of the Act, the landlord may retain the security deposit in partial satisfaction of the monetary orders made above.

### **Conclusion**

Pursuant to sections 67 and 72 of the Act, I order that the tenant pay the landlord \$4,225, representing the following:

Description	Amount
Rental Arrears	\$4,650.00
Filing Fee	\$100.00
Deposit Credit	-\$525.00
<b>Total</b>	<b>\$4,225.00</b>

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord within two days of being served with a copy of this decision and attached orders by the landlord.

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 4, 2022

---

Residential Tenancy Branch