



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPR-DR, MNRL, MNR-DR, MNDL, MNDCL, FFL

### **Introduction**

This participatory hearing was scheduled pursuant to a decision issued under the Direct Request procedure on August 18, 2022 in response to the landlord's Application for Dispute Resolution for an Order of Possession and Monetary Order for unpaid rent made under the Direct Request procedure.

At the hearing, only the landlord appeared. The landlord was affirmed.

Since the tenant did not appear, I explored service of the hearing materials and evidence upon the tenant.

The landlord testified that she sent the tenant notification of this hearing by registered mail sent on August 21, 2022. The landlord provided a registered mail tracking number in addition to photographs of the registered mail envelope and testified the package was successfully delivered. A search of the registered mail tracking number confirmed the registered mail was successfully delivered on August 24, 2022. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Shortly after the hearing commenced, the landlord informed me that the tenant has already vacated the rental unit. As such, I find the landlord no longer requires an Order of Possession and I do not provide one with this decision.

The landlord had submitted an Amendment to an Application for Dispute Resolution on December 6, 2022 in an attempt to add other damages or losses incurred after the tenancy ended under Rule 4.1 of the Rules of Procedure; however, the landlord was unable to serve the tenant in person or by registered mail after the tenant moved out of the rental unit. The landlord had attempted to use email to serve the tenant with the

Amendment on December 12, 2022; however, the email was returned as being “misdirected”. Sending an emailed Amendment on December 12, 2022 is too late to amend a claim set for hearing on December 23, 2022 and I am not satisfied it was delivered to the tenant. Therefore, I did not accept that service was accomplished by email and I did not permit the claim to be amended under Rule 4.1 of the Rules of Procedure.

Despite for aforementioned, Rule 4.2 of the Rules of Procedure provides that an application may be amended at the hearing in certain circumstances, as follows:

**4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

The landlord testified that the tenant remained in possession of the rental unit for several months after the landlord filed her Application for Dispute Resolution, without paying rent. I find Rule 4.2 applies to this situation and I permitted the landlord to amend the application during the hearing to include unpaid rent until the tenant vacated the rental unit.

The landlord also requested authorization to retain the tenant’s security deposit in partial satisfaction of the unpaid rent. I amended the application to include this request as it is non-prejudicial to the tenant to do so since it would reduce any Monetary Order I issue to the landlord with this decision.

The landlord remains at liberty to make another Application for Dispute Resolution to seek recovery of damages or losses not considered under this proceeding.

**Issue(s) to be Decided**

1. Is the landlord entitled to recovery of unpaid rent and if so, how much?
2. Is the landlord authorized to retain the tenant’s security deposit?
3. Award of the filing fee.

### Background and Evidence

The landlord submitted that the tenancy started on June 1, 2021 and the landlord collected a security deposit of \$1500.00. Rent was set at \$3000.00 payable on the first day of every month. The landlord provided a copy of an unsigned tenancy agreement reflecting the above terms. The landlord stated that the tenancy started during the height of the Covid-19 pandemic so the parties did not meet to sign the tenancy agreement. Nor did the landlord use the services of an electronic document signing application. The landlord stated she thought it would be satisfactory to provide the tenant with an unsigned tenancy agreement given the pandemic. In any event, the landlord submitted that the tenant did pay the monthly rent of \$3000.00, although it was often in the form of two payments per month, up until the month of May 2022.

For the month of June 2022, the tenant only paid \$1000.00 toward the rent due for June. On June 20, 2022 the landlord sent a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") to the tenant via text and email. The 10 Day Notice initially sent to the tenant was not signed or fully completed; however, the landlord testified that she rectified the issue and sent another 10 Day Notice to the tenant that was signed and duly completed.

The tenant did not pay the outstanding rent for June 2022 or vacate the rental unit.

On July 4, 2022, the landlord made her Application for Dispute Resolution by Direct Request, seeking an Order of Possession and Monetary Order for unpaid rent for June and July 2022.

Also on July 4, 2022 the tenant filed a late application to dispute the 10 Day Notice. The tenant's application was subsequently withdrawn when both parties confirmed the tenant had vacated the rental unit at the end of October 2022.

The landlord described how at various times the tenant would communicate to the landlord that she would move out if the landlord would return the security deposit and at other times the tenant stated she would remain in the rental unit until the hearing date.

The tenant remained in possession of the rental unit until the last weekend of October 2022 when the landlord observed the tenant move out. The landlord has regained possession of the rental unit but the rental unit has not yet been re-rented.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a lawful right to withhold rent under the Act.

I accept the unopposed evidence before me that the monthly rent was \$3000.00 and the tenant failed to pay \$2000.00 of the rent for June 2022 and did not pay any rent after June 2022. I was not presented any evidence to suggest the tenant had a legal right to withhold rent from the landlord. I also accept the unopposed evidence before me that the tenant did not vacate the rental unit until the last weekend in October 2022. Therefore, I find the landlord entitled to recover unpaid rent from the tenant for the months of June 2022 through October 2022, which amounts to \$14000.00.

I further award the landlord recovery of the \$100.00 filing fee, pursuant to section 72 of the Act.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

In keeping with all of the above, I provide the landlord with a Monetary Order calculated as follows:

|  |            |
|--|------------|
| Unpaid rent – June 2022 through October 2022 | \$14000.00 |
| Filing fee                                   | 100.00     |
| Less: security deposit                       | ( 1500.00) |
| Monetary Order                               | \$12600.00 |

As I stated earlier in this decision, any damages or loss incurred by the landlord after the tenant vacated that have not been considered under this Application for Dispute Resolution may be pursued under another Application for Dispute Resolution.

### Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$12600.00 for unpaid rent and recovery of the filing fee.

The landlord is at liberty to make another Application for Dispute Resolution for other damages or losses not considered by way of this proceeding.

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: December 23, 2022

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Residential Tenancy Branch