



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an adjourned *ex parte* application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice) pursuant to sections 46 and 55;
- a monetary order for unpaid rent, pursuant to section 26; and
- an authorization to recover the filing fee for this application, under section 72.

I left the teleconference connection open until 10:07 A.M. to enable the tenant to call into this teleconference hearing scheduled for 9:30 A.M. The tenant did not attend the hearing. Landlord KT (the landlord) 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 Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00.”

The landlord affirmed he mailed the notice of application and the evidence via registered mail on August 18, 2022 and the notice of hearing and the interim decision on September 14, 2022. The landlord mailed the packages to the rental unit’s address. The tracking numbers are recorded on the cover page of this decision.

Based on the landlord's convincing testimony and the tracking numbers, I find the landlord served the notice of application, the evidence, the notice of hearing and the interim decision in accordance with section 89(2)(b) of the Act.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail the tenant is deemed to have received the notice of application and the evidence on August 23 and the notice of hearing and the interim decision on September 19, 2022, in accordance with section 90 (a) of the Act.

Rule of Procedure 7.3 allows a hearing to continue in the absence of the respondent.

### Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. a monetary order for unpaid rent?
3. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord stated that he believes the ongoing tenancy started in 2017. Monthly rent, due on the first day of the month, was \$1,630.00 until September 30, 2022 and it increased to \$1,654.00 on October 01, 2022. At the outset of the tenancy the landlord collected a security deposit (the deposit) of \$750.00 and holds it in trust.

The landlord submitted into evidence the tenancy agreement. It states the tenants are MI and LE. The handwritten tenants' last name is not clear. It states the tenancy started on July 01, 2015. It is signed by the landlord and tenants MI and LE on October 29, 2021.

The landlord testified that the tenants asked for a new tenancy agreement and the landlord signed the tenancy agreement on October 29, 2021.

The interim decision states:

I also note that the tenant's address on the tenancy agreement is incomplete as it does not indicate the city in which the rental unit is located.

Finally, I find the handwriting on the tenancy agreement is such that I am not able to confirm the street name for the rental unit address.

I have reviewed all documentary evidence and I find that the spelling of the tenant's name on the tenancy agreement does not match the spelling of the tenant's name on the Application for Dispute Resolution.

The landlord said that MI's last name is Plumber and that the rental unit is located in the city recorded on the cover page of this decision. The landlord affirmed that he was not aware that he needed to include the city where the rental unit is located on the tenancy agreement.

The landlord stated the tenants paid rent on July 01, 2022 in the amount of \$1,175.75.

The landlord testified he attached the Notice to the rental unit's front door on July 04, 2022.

The landlord submitted a copy of the July 04 2022 Notice. It states that tenant MI Plumber failed to pay rent in the amount of \$454.25 due on July 01, 2022. The effective date is July 20, 2022.

The landlord is seeking an order of possession and a monetary order in the amount of \$454.25, as the tenant is currently in rental arrears for the amount claimed. The landlord submitted a worksheet indicating that tenant ME has rental arrears of \$454.25.

The landlord said that he has not seen LE in the rental unit since early 2022 and that he does not know if LE currently lives in the rental unit.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

### Tenants

Based on the landlord's undisputed testimony and the Notice, I find that MI's last name is Plumber, as stated in this application for dispute resolution.

Residential Tenancy Branch (RTB) Policy Guideline 13 states:

**A tenant is a person who has entered a tenancy agreement to rent a rental unit or manufactured home site.** If there is no written agreement, the person who made an oral agreement with the landlord to rent the rental unit or manufactured home site and pay the rent is the tenant. There may be more than one tenant; co-tenants are two or more tenants who rent the same rental unit or site under the same tenancy agreement. Generally, co-tenants have equal rights under their agreement and are jointly and severally responsible for meeting its terms, unless the tenancy agreement states otherwise. “Jointly and severally” means that all co-tenants are responsible, both as one group and as individuals, for complying with the terms of the tenancy agreement. [...]

**Sometimes a co-tenant may move out of the rental unit without giving the landlord a notice to end tenancy. If a co-tenant decides to remain in the rental unit and continue with the tenancy, they can do so as long as they uphold their responsibilities according to the agreement (such as paying the full amount of rent, etc.). The co-tenant on the tenancy agreement who moved out remains liable for the tenancy agreement until the tenancy ends, regardless of whether or not they reside in the unit.**

Example: Dennis and Warren are co-tenants. Warren moves out of the rental unit without giving notice to the landlord and Dennis chooses to continue living in the rental unit and carry on with the tenancy, paying the full amount of rent by himself. In this circumstance, the original tenancy agreement remains in full effect and both tenants continue to be responsible for complying with the terms of their agreement.

If eventually Dennis would like to have an additional person move in to the rental unit in place of Warren, he may have a discussion with his landlord about having a new co-tenant or refer to his tenancy agreement to determine if it has existing terms regarding additional occupants. See ‘Section H: Occupants’ for more information about occupants.

(emphasis added)

As both MI and LE are listed on the tenancy agreement and signed it on October 29, 2021, I find that the tenants are MI and LE.

### Order of Possession

Based on the landlord’s undisputed testimony, I find the landlord served the Notice on July 04, 2022 in accordance with section 88(g) of the Act. Per section 90(c) of the Act, tenant MI is deemed to have received the Notice on July 07, 2022.

Section 52 of the Act states:

**In order to be effective, a notice to end a tenancy must be in writing and must**

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and

**(e) when given by a landlord, be in the approved form.**

(emphasis added)

Based on the landlord's vague testimony, I find the landlord did not prove, on a balance of probabilities, that LE is not occupying the rental unit.

All the tenants have equal rights and are jointly responsible for meeting the obligations of the tenancy agreement. If the landlord obtains an order of possession, all the tenants and occupants of the rental unit would have to move out, including LE.

I note that the Notice contains two lines for the tenants, and it states: "use Schedule of Parties form RTB26 to list additional tenants". Form RTB 26 (schedule of parties) states: "if the form you are completing does not have enough room for additional applicants or respondents, use this Schedule of Parties form to continue. It is to be filed with your completed application."

I find that as tenant LE is not named on the Notice and the application, LE did not have the right to submit a response to the landlord's Notice and application.

I find that by serving the Notice not indicating tenant LE, the landlord did not complete the Notice properly. A notice to end tenancy given by a landlord must be given in the approved form, which must be properly completed.

Thus, I find the Notice does not comply with section 52(e) of the Act.

As such, the Notice is not effective, and I cannot issue an order of possession.

I dismiss the claim for an order of possession.

### Monetary Order

Section 26(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Based on the landlord's undisputed testimony, I find the landlord and tenants MI and LE agreed to a tenancy and tenants MI and LE were obligated to pay monthly rent in the amount of \$1,630.00 on the first day of each month until September 2022.

Based on the landlord's undisputed testimony and the worksheet, I find that tenants MI and LE did not pay the balance of rent due on July 01, 2022 in the amount of \$454.25.

Per section 26(1) of the Act, I award the landlord the balance of July 2022 rent in the amount of \$454.25.

I note that the landlord may seek a monetary order against all the tenants or only one of them.

### Filing fee and summary

As the landlord was partially successful, I find that the landlord is entitled to recover the \$100.00 filing fee.

In summary, the landlord is entitled to \$554.25.

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a landlord may be deducted from the deposit held by the landlord. I order the landlord to retain the amount of \$554.25 from the deposit in full satisfaction of the monetary award.

The landlord is advised to complete tenancy documents with clear handwriting.

### Conclusion

I dismiss the claim for an order of possession without leave to reapply.

Pursuant to sections 26 and 72 of the Act, I award the landlord \$554.25 and authorize the landlord to retain this amount from the deposit in full satisfaction of the monetary award.

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: January 17, 2023

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Residential Tenancy Branch