



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DREAM CARPETS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

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

### **Introduction**

This hearing was set to deal with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit.

The corporate landlord was represented at the hearing by a manager for the corporation, the accountant and a property manager; however, there was no appearance on part of the tenant.

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

The property manager submitted that the proceeding package was sent to the tenant via registered mail on September 14, 2022. When asked if the registered mail was successfully delivered the property manager replied that the registered mail was not returned. A search of the registered mail tracking number showed that the registered mail was returned to sender because it was unclaimed.

The property manager sent an updated ledger to the tenant on December 23, 2022 via registered mail. That registered mail package was not picked up by the tenant either.

I asked the landlord's representatives if the tenant was still residing in the rental unit to which the landlord's manager stated he saw the tenant at the property two days ago and the property manager stated when they have knocked on the door of the rental unit, they can hear movement in the rental unit.

Based on the unopposed evidence before me, I was reasonably satisfied the landlord met its obligation to serve the tenant with notification of this proceeding in a manner that complies with the Act and the tenant is still residing in the rental unit. Accordingly, I

deemed the tenant to be served five days after the registered mail was sent to him, pursuant to section 90 of the Act, and I continued to hear from the landlord's representatives without the tenant present.

#### Procedural Matter – Monetary claim

I noted that the landlord's monetary claim, as set out on the Application for Dispute Resolution was inconsistent with other supporting documents and oral testimony. To illustrate: the application indicates the landlord is seeking unpaid rent of \$325.00; the Monetary Order Worksheet indicates that the amount claimed is \$776.00 for the month of April 2022. The updated ledger the property manager submitted and sent to the tenant in December 2022 indicates a balance owing of \$6178.00 but during the hearing the accountant described the tenant making a payment of \$3100.00 that was not recorded in the ledger. The accountant testified that the tenant currently owes rent of \$4630.00 for the months of October 2022 through January 2023 but that sum does not reconcile to the ledger even if I adjust the ledger for the \$3100.00 payment.

An applicant has the burden to provide the full particulars of the claim being made against the other party pursuant to section 59 of the Act and Rule 2.5 of the Rules of Procedure where a detailed calculation is required for a monetary claim. These requirements are to put the respondent on notice as to the claim being made against them and in keeping with the principles of natural justice and fairness. Based on the inconsistent and ever changing amounts put forth by the landlord's representatives, I was unsatisfied the landlords sufficiently set out their monetary claim and I decline to give further consideration to the monetary claim. The landlord's monetary claim is dismissed with leave to reapply.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

#### Background and Evidence

The landlord's representatives submitted that the tenancy started on January 1, 2010 and the tenant paid a security deposit of \$325.00. The rent was originally set at \$750.00 payable on the first day of every month. Starting June 1, 2019 the rent was increased to \$766.00.

The landlord's manager testified that on May 6, 2022 he taped a 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") to the rental unit door. The 10 Day Notice submitted into evidence indicates that \$776.00 was outstanding for April 2022 and \$776.00 was outstanding for May 2022.

The 10 Day Notice submitted as evidence is an old two page version the Residential Tenancy Branch created in 2016. I asked the landlord where he obtained the 10 Day Notice to which he responded he got it from "the website". I asked the landlord how long ago he found the 10 Day Notice on the website to which the landlord responded "right away".

When asked if the tenant paid the outstanding rent, the landlord's manager responded that the tenant gave him \$3100.00, in cash, on September 9, 2022. The landlord's accountant testified the \$3100.00 payment was actually received on September 6, 2022. The accountant also testified that the tenant paid \$800.00, in cash, on May 17, 2022.

The \$800.00 payment was reflected in the ledger presented to me; however, the \$3100.00 payment was not.

I asked if the landlord had provided receipts to the tenant for the cash payments to which the landlord's manager stated yes. When asked to describe the content on the receipt, the landlord's manager stated he wrote on the receipt the date payment was received, the amount of the payment, and the address of the rental unit. There was no mention of the landlord accepting the payment for "use and occupancy only". Rather, the landlord's agent stated that the tenant has had a long habit of making partial payments and then lump sum payments and the landlord has told the tenant he is "not happy" with the way the tenant pays rent. The landlord's manager also testified that the tenant has been served 10 Day Notices previously and the tenant would eventually make payment toward the rent arrears and the landlord did not pursue eviction.

I also noted that if the tenant paid \$800.00 and \$3100.00 then the rent arrears would have been satisfied. The accountant responded that the tenant stopped paying rent any rent after the September 6, 2022 payment so a Monetary Order should be issued for the rent outstanding from October 2022 through January 2023.

## Analysis

The landlord's request for an Order of Possession is being made under section 55(2)(b) of the Act. Section 55(2)(b) provides as follows:

### **Order of possession for the landlord**

55 ...

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

Upon consideration of what is before me, I decline to grant the landlord's request for an Order of Possession based on the 10 Day Notice dated May 6, 2022 for a number of reasons, including the following.

The 10 Day Notice prepared by the landlord is not on the approved form. Section 52 of the Act requires that a notice to end tenancy issued by a landlord be in the "approved form". The 10 Day Notice used by the landlord was published in 2016 and has not been the approved form for a number of years. Therefore, I find the tenant has not been served with a valid and enforceable 10 Day Notice.

Aside from using an old form, the landlord's agent testified that he only recently obtained it from "the website" "right away" which I interpret to mean he printed it from the Residential Tenancy Branch ("RTB") website just prior to serving it to the tenant; however, that would be impossible since it has not been available on the RTB website for a number of years. This testimony, which is false, causes me question the credibility of the landlord's manager.

Also of consideration is the landlord's submissions concerning the amount of rent outstanding was the inconsistency, as I described previously in this decision. It appears the landlord's manager and accountant fail to communicate to the landlord's property manager the receipt of a significant cash payment from the tenant. Nor, did the

landlord's manager provide copies of the receipts he allegedly issued to the tenant for cash payments after the 10 Day Notice was issued.

Finally, the landlord's representative testified that the tenant has had a long standing history of paying rent in partial payments followed by lump sums and the landlord has not pursued eviction previously. It appears the tenant continued with that practice, yet the landlord does want to pursue eviction at this time. Considering this tenancy has been in existence for 12 years, I would expect that if the landlord seeks to end the tenancy based on this long standing practice, that the landlord would first put the tenant on written notice that rent must be paid in full by the due date, or else the landlord would pursue eviction; and, if the landlord accepts payment of rent 10 days after a 10 Day Notice has been served that the landlord put the tenant on written notice that the landlord is not reinstating the tenancy and that the payment was being accepted "for use and occupancy only". The landlord has not done either of these things.

Although I have denied the landlord's request for an Order of Possession, I recognize that rent may be outstanding and the tenant may still be occupying the rental unit. As such, if rent remains outstanding the landlord is at liberty to serve the tenant with another 10 Day Notice, so long as it is in the current approved form. I also suggest the landlord put the tenant on notice, in writing, that the landlord will no longer tolerate late and partial payments of rent if the landlord intends to end the tenancy based on conduct that has been tolerated by the landlord for a long time. I further suggest that the landlord provide clear and consistent accounting of payments made by the tenant, including receipts for cash payments.

The landlord is at liberty to seek an Order of possession in the future if, after serving the tenant with a 10 Day Notice in the approved form, the rent remains outstanding.

### Conclusion

The landlord's request for an Order of Possession is denied based on the 10 Day Notice and evidence before me; however, the landlord is at liberty to re-issue another 10 Day Notice, in the approved form, and serve it upon the tenant if rent remains outstanding.

The landlord's monetary claim is dismissed with leave to reapply.

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