



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding McDonald Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR-MT, RP, LAT, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on December 19, 2022 for:

- an order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, dated October 12, 2022 (the 10 Day Notice), noting he needed more time to dispute the Notice;
- an order for repairs made to the unit;
- authorization to change the locks to the rental unit; and
- the filing fee.

The hearing started at 1:30 p.m. The tenant did not attend, though the teleconference line remained open for 10 minutes. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; she was also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Rule 7.3 permits an arbitrator to conduct a hearing in the absence of any party, or dismiss the application with or without leave to re-apply.

The landlord testified the tenant did not serve her with the Notice of Dispute Resolution Proceeding or any evidence.

The landlord testified that as the tenant still resides in the unit, the landlord is seeking an order of possession as well as unpaid rent.

### Preliminary Matters

The landlord testified that CB is the only tenant; this is supported by the 10 Day Notice and tenancy agreement in evidence. With the agreement of the landlord, I amend the tenant's application to remove the names of people who are not tenants, pursuant to section 6(1) of the Act.

As the 10 Day Notice and the tenancy agreement note unit information different from that named in the tenant's application, I have amended the dispute address to match that in the 10 Day Notice and the tenancy agreement.

As the tenant has failed to serve the landlord as required by the Act and the Rules of Procedure, I dismiss the tenant's application. The remainder of the decision will consider the landlord's entitlement to possession and unpaid rent, pursuant to section 55(1.1).

### Issues to be Decided

Is the landlord entitled to an order of possession and a monetary order due to non-payment of rent?

### Background and Evidence

The landlord provided the following particulars regarding the tenancy. It began July 15, 2022; rent is \$3,500.00, due on the first of the month; and the tenant paid a security deposit of \$1,875.00, which the landlord still holds.

The landlord testified that she served the 10 Day Notice on the tenant by posting it to the door on October 12, 2022. The Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form. The 10 Day Notice indicates the tenancy is ending because the tenant has failed to pay rent of \$3,500.00 due on October 1, 2022.

The landlord testified that the tenant now owes outstanding rent as follows:

<b>Month</b>	<b>Rent due</b>	<b>Rent paid</b>	<b>Outstanding</b>
October 2022	\$3,500.00	\$0.00	\$3,500.00
November 2022	\$3,500.00	\$0.00	\$3,500.00
December 2022	\$3,500.00	\$0.00	\$3,500.00
January 2023	\$3,500.00	\$0.00	\$3,500.00
		<b>Total</b>	<b>\$14,000.00</b>

### Analysis

Pursuant to section 46 (1) of the Act, 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. A notice under this section must comply with the form and content provisions of section 52.

Sections 46(4) and (5) of the Act state:

- (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.

Based on the affirmed testimony of the landlord, I find the landlord served the 10 Day Notice on the tenant on October 12, 2022 in accordance with section 88 of the Act, and deem it received by the tenant on October 15, 2022, in accordance with section 90.

I find the 10 Day Notice meets the form and content requirements of section 52 of the Act.

I find that the tenant did pay rent or file an application for dispute resolution within 5 days of October 15, 2022, the timeline granted under section 46(4) of the Act. Accordingly, I find that the tenant is conclusively presumed under section 46(5) to have

accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, October 25, 2022, and must vacate the rental unit.

Therefore, I find the landlord is entitled to an order of possession.

As the landlord testified that the tenant still resides in the rental unit, I order that in accordance with section 68(2)(a) of the Act, the tenancy ended on the date of the hearing, January 13, 2023.

I accept the landlord's undisputed affirmed testimony that the tenant owes outstanding monthly rent of \$3,500.00 for October, November, and December 2022, totalling \$10,500.00.

Considering the rent owing for January, [Policy Guideline 3. Claims for Rent and Damages for Loss of Rent](#) states that a tenant is liable to pay rent until a tenancy agreement ends.

I find the landlord is entitled to recover \$10,500.00 in unpaid rent for October–December 2022, and \$1,467.74 for January 1–13, 2023 ( $3500/31 \times 13 = 1,467.74$ ), for a total of \$11,967.74 ( $10,500.00 + 1,467.74$ ).

In accordance with section 72 of the Act, I allow the landlord to retain \$1,875.00 of the tenant's security deposit in partial satisfaction of the amount owing. The landlord is entitled to a monetary order as follows:

Unpaid rent	\$11,967.74
Security deposit	-\$1,875.00
<b>Owed to landlord</b>	<b>\$10,092.74</b>

### Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession which will be effective two days after it is served on the tenant.

The landlord is granted a monetary order in the amount of \$10,092.74 for unpaid rent.

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 16, 2023

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Residential Tenancy Branch