



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding IMH POOL XVIII LP c/o Metcap Living Management  
Inc and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing dealt with the Landlord's application under the *Residential Tenancy Act* (the "Act") for:

- an Order of Possession under a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 5, 2022 (the "10 Day Notice") pursuant to sections 46 and 55;
- a Monetary Order of \$4,001.00 for unpaid rent and/or utilities pursuant to section 55; and
- authorization to recover the filing fee for this application from the Tenant pursuant to section 72.

The Landlord's representative LM attended this hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:28 am in order to enable the Tenant to call into the hearing scheduled to start at 11:00 am. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that LM and I were the only ones who had called into the hearing.

I informed LM that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Service of Documents

LM confirmed that the Landlord's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package") were sent to the Tenant via registered mail on October 20, 2022. The Landlord submitted a registered mail receipt and tracking number in support (the first of two tracking numbers referenced on the cover page of this decision). LM testified that the resident manager would have communicated with the Tenant about the steps being taken by the Landlord. LM confirmed that the Landlord did not receive any documents or response from the Tenant.

Based on LM's testimony, I find the Tenant was served with the NDRP Package in accordance with sections 88(c) and 89(1)(c) of the Act, on October 20, 2022. Pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the NDRP Package on the fifth day after mailing, or October 25, 2022.

### Preliminary Matter – Tenant Has Vacated

LM testified that the Tenant vacated the rental unit on October 20, 2022. LM confirmed that the Landlord has possession of the rental unit. Based on LM's testimony, I find the Landlord's claim for an Order of Possession to be no longer applicable in the circumstances.

### Preliminary Matter – Amendment of Landlord's Application

LM confirmed that the 10 Day Notice consists of unpaid rent for August and September 2022. LM submitted that the Landlord seeks to recover payment from the Tenant for October 2022 as well.

Rule 4.2 of the Rules of Procedure states:

#### **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.

I find it can be reasonably anticipated in the circumstances for the Landlord to seek compensation for occupancy of the rental unit by the Tenant up to October 20, 2022, the date that the Tenant vacated the rental unit. Pursuant to Rule 4.2, I allow the Landlord to amend its application to claim compensation for the Tenant's use of the rental unit to October 20, 2022.

### Issues to be Decided

1. Is the Landlord entitled to compensation for unpaid rent?
2. Is the Landlord entitled to compensation for overholding?
3. Is the Landlord entitled to recover the filing fee?

### Background and Evidence

This tenancy commenced on June 1, 2022 for a fixed term ending on May 31, 2023, and was to continue thereafter on a month-to-month basis. Rent was \$2,013.00 due on the first day of each month. The Tenant paid a security deposit of \$1,006.50.

The 10 Day Notice is signed by LM on behalf of the Landlord and has an effective date of September 20, 2022. The 10 Day Notice states that the Tenant failed to pay rent of \$4,001.00 due on September 1, 2022.

The Landlord submitted a money order worksheet which explains that the Tenant owed \$1,988.00 for August 2022 rent and \$2,013.00 for September 2022 rent.

LM confirmed that a copy of the 10 Day Notice was sent to the Tenant via registered mail on September 7, 2022. The Landlord submitted a copy of the registered mail receipt and tracking number (the second of two tracking numbers referenced on the cover page of this decision).

LM confirmed that the Landlord seeks to recover unpaid rent, compensation for overholding in October 2022, and for reimbursement of the filing fee.

## Analysis

### *1. Is the Landlord entitled to compensation for unpaid rent?*

Section 26(1) of the Act states that a tenant must pay rent when due, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

If a tenant does not pay rent when due, section 46 of the Act permits a landlord to take steps to end a tenancy by issuing a notice to end tenancy for unpaid rent.

Section 46(2) of the Act requires that the notice to end tenancy given by a landlord comply with section 52 of the Act in order to be effective. Section 52 states:

#### **Form and content of notice to end tenancy**

- 52 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.

I have reviewed a copy of the 10 Day Notice and that it complies with the requirements of section 52 in form and content.

I find the Tenant was served with a copy of the 10 Day Notice via registered mail on September 7, 2022, in accordance with section 88(c) of the Act. Pursuant to section 90(a) of the Act, I find the Tenant is deemed to have received the 10 Day Notice on the fifth day after mailing, or September 12, 2022.

Section 46(4) of the Act permits a tenant to dispute a 10 day notice to end tenancy for unpaid rent, or pay the outstanding rent in full, within 5 days after receiving such notice. I find the Tenant did not apply to dispute the 10 Day Notice or pay the outstanding rent in full by September 17, 2022.

Section 46(5) of the Act states that if a tenant who has received a notice under section 46 does not pay the rent or make an application for dispute resolution in accordance with section 46(4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

Furthermore, sections 55(2)(b) and 55(4) of the Act state 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; [...]

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 *[Resolving Disputes]*,

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I have found the 10 Day Notice was deemed served on September 12, 2022, the time for disputing the 10 Day Notice expired on September 17, 2022, and the Tenant did not pay the unpaid rent or make an application for dispute resolution. Accordingly, I find the Tenant is conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, or September 22, 2022.

Pursuant to section 55(4)(b) of the Act, I order the Tenant to pay to the Landlord \$4,001.00 for unpaid August and September 2022 rent.

*2. Is the Landlord entitled to compensation for overholding?*

Section 57(3) of the Act states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the rental unit after the tenancy is ended.

Based on the Landlord's undisputed evidence, I find the Tenant overheld in the rental unit until October 20, 2022. Therefore, I find the Landlord is entitled to compensation for the Tenant's occupancy of the rental unit up to and including October 20, 2022.

Pursuant to section 57(3) of the Act, I order the Tenant to pay to the Landlord \$1,298.71 ( $\$2,013.00 \times 20/31$  days) as compensation for overholding in October 2022.

*3. Is the Landlord entitled to recover the filing fee?*

The Landlord has been successful in this application. I grant the Landlord's claim for reimbursement of the filing fee under section 72(1) of the Act.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenant's \$1,006.50 security deposit held by the Landlord in partial satisfaction of the total awarded in this application.

The Monetary Order granted to the Landlord for the balance of the total awarded in this decision is calculated as follows:

<b>Item</b>	<b>Amount</b>
Unpaid Rent for August and September 2022 (\$1,988.00 + \$2,013.00)	\$4,001.00
Compensation for Overholding in October 2022 (\$2,013.00 $\times$ 20/31 days)	\$1,298.71
Filing Fee	\$100.00
<b>Subtotal</b>	<b>\$5,399.71</b>
Less Security Deposit	- \$1,006.50
<b>Total Monetary Order for Landlord</b>	<b>\$4,393.21</b>

Conclusion

The Landlord is entitled to compensation of \$4,001.00 in unpaid rent and \$1,298.71 for overholding in October 2022 from the Tenant. The Landlord is also entitled to reimbursement of the \$100.00 filing fee.

Pursuant to section 72(2)(b) of the Act, the Landlord is authorized to retain the Tenant's **\$1,006.50** security deposit in partial satisfaction of the total amount awarded in this decision.

Pursuant to sections 55, 57, and 72 of the Act, I grant the Landlord a Monetary Order in the amount of **\$4,393.21** for the balance awarded. This Order may be served on the Tenant, filed in the Small Claims Division of the Provincial Court, and enforced as an Order of that Court.

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: February 16, 2023

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Residential Tenancy Branch