



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding SELECT REAL ESTATE PROPERTY MANAGEMENT  
DIVISION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

The Landlord applied for dispute resolution (“Application”) by way of an *ex parte* Direct Request Proceeding under section 55(4) of the *Residential Tenancy Act* (the “Act”). The Landlord requests an Order of Possession, a Monetary Order for unpaid rent and authorization to recover the filing fee for their Application from the Tenant.

During the direct request proceeding it was determined by the Adjudicator that the Tenant had made rental payments to the Landlord after the effective date of the 10 Day Notice to End Tenancy. It was not clear as to whether the Tenant was aware if this rent payment reinstated the tenancy or not as no receipts for “use and occupancy only” were provided as evidence by the Landlord.

As a result, it was ordered that the proceeding be adjourned and reconvened as participatory hearing under section 74 of the Act.

At the hearing the Landlord was represented by an Agent who affirmed to tell the truth during proceedings and was given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions. The teleconference commenced at 11:00 A.M. and the line was left open until 11:15 A.M. to enable the Tenant to call in, however no party attended for the Tenant.

The Landlord testified the Notice of Dispute Resolution Package (“Materials”) was served on the Tenant via registered mail on January 20, 2023. A copy of the envelope the Materials were sent to the Tenant in was provided as evidence. Therefore, I find that pursuant to section 89 of the Act that the Landlord’s Materials were sufficiently served to the Tenant. The registered mail tracking number is displayed on the envelope and is included on the front page of this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent?
3. Is the Landlord entitled to recover the filing fee for the Application from the Tenant?

### Background and Evidence

The attending party was given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The Landlord confirmed the tenancy started on September 1, 2021 with monthly rent of \$1,895.00 due on the first of the month. The Landlord also testified that a security deposit of \$947.50.00 was taken, which they still retain, and that there was no pet damage deposit taken.

The rent due on October 1, 2022 went unpaid and a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") dated October 4, 2022 was served to the Tenant by being attached to the door of the rental unit.

The Landlord testified that partial rent payments for October 2022 and November 2022 of \$3,882.98 and \$1,001.49 were made by the Tenant on October 30, 2022 but the transactions were reversed due to insufficient funds. The Tenant then made debit card payments of \$1,910.00 on November 15, 2022 and \$1,600.00 on November 25, 2022. Further partial rent payments were made by the Tenant thusly; \$1,900.00 on December 6, 2022, \$401.49 on January 5, 2023, \$1,500.00 on January 6, 2023 and \$1,911.49 on January 23, 2023.

The Landlord affirmed that currently \$330.00 is owed by the Tenant in respect of outstanding rent and late payment fees which were applied at \$25.00 per late payment in accordance with the Tenancy Agreement.

When asked if receipts for "use and occupancy only" had been issued to the Tenant in respect of the partial rent payments, the Landlord testified that it was their normal

conduct to send such receipts, but they could not confirm if this had been done in this instance as they did not deal with the payments themselves. They confirmed they are still seeking an Order of Possession and a Monetary Order to recover the outstanding rent and the filing fee.

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some, or all, of the rent. Additionally, section 46(1) of the Act allows a landlord to end a tenancy if the tenant does not pay rent on time by issuing a 10 Day Notice to End Tenancy for Unpaid Rent.

I accept the Landlord's undisputed testimony that rent due October 1, 2022 was not paid by the Tenant. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason, namely, the non-payment of rent. I also find that the Notice complies with the form and content requirements of section 52 of the Act.

The Notice was served on October 4, 2022 by attaching to the door of the rental unit, therefore would have been deemed received on October 7, 2022, the third day after it is attached in accordance with section 90 of the Act. Section 53 of the Act provides that incorrect effective dates automatically changed which is of relevance here as the effective date of the Notice should read October 17, 2022 instead of October 14, 2022.

I accept the Landlord's undisputed testimony that the outstanding rent was not paid in full within five days of the Tenant receiving the Notice. Had this been done it would have meant the Notice has no effect in accordance with section 46(4)(a). Additionally, there is no record of the Tenant disputing the Notice. Therefore, under section 46(5) of the Act, the Tenant is presumed to have accepted the Notice.

Based on the above findings, the Landlord is granted an Order of Possession pursuant to section 55(2)(b) of the Act. A copy of the Order of Possession is attached to this Decision and must be served on the Tenant. The Tenant has two days to vacate the rental unit from the date of service or deemed service. I find that the Tenancy ended on October 17, 2022.

The Landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the Tenant is ordered to pay \$330.00 in unpaid rent to the Landlord. The Landlord confirmed the balance is made up partially of late fees. I note the Tenancy

Agreement at point 10 provides for a charge of \$25.00 per late payment which is in accordance with section 7 of the *Residential Tenancy Regulation*.

As the Landlord has been successful in their Application, I authorize the Tenant to pay the Landlord the amount of \$100.00 in respect of the filing fee in accordance with section 72 of the Act.

The Landlord testified they retain a security deposit of \$947.50. Under section 38(4)(b) of the Act, the Landlord is ordered to retain \$430.00 from the security deposit in full satisfaction of the Payment Order and as a result, no Monetary Order is issued.

### Conclusion

**The application is granted.**

The Landlord is issued an **Order of Possession**.

The Landlord is authorized to retain \$430.00 from the security deposit.

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: March 1, 2023

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Residential Tenancy Branch