



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

On March 2, 2023, the landlord applied for (i) an order of possession on an undisputed notice to end tenancy for unpaid rent (the “Notice”) under section 55(2)(b) of the *Residential Tenancy Act* (the “Act”); (ii) a monetary order for unpaid rent under section 55(1.1) of the Act; and (iii) authorization to recover the filing fee under section 72 of the Act.

The landlord attended the hearing. No one dialled in on behalf of the tenants at any point during the hearing, which lasted from 9:30 A.M. to 9:53 A.M. The landlord testified under oath that they served a *Notice of Dispute Resolution Proceeding* on the tenants by registered mail. There is proof of tracking information submitted into evidence. It is my finding that the tenants were served with the required notice in compliance with the Act.

### Issue(s) to be Decided

1. Is the landlord entitled to an order of possession?
2. Is the landlord entitled to monetary compensation for unpaid rent?
3. Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began May 1, 2022. Rent is \$2,200.00 due on the first day of the month. The landlord currently retains a \$1,100.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on January 11, 2023 by registered mail. Page two of the Notice indicate that the tenants did not pay rent in the amount of \$3,520.00 that was due on January 1, 2023. All pages of the Notice were served and submitted into evidence. The tenants have not disputed the Notice and the landlord seeks an order of possession.

The landlord affirmed that the tenants have not paid the rent in full starting January 2023. The landlord further affirmed that the tenants have outstanding unpaid rent as follows:

Month	Rent due	Rent Paid	Rent owed
January 2023	\$2,200.00	\$1,130.00	(\$1,070.00)
February 2023	\$2,200.00	\$0.00	(\$2,200.00)
March 2023	\$2,200.00	\$0.00	(\$2,200.00)
		Total	(\$5,470.00)

### Analysis

Section 26 of the Act requires tenants to pay rent on time unless they have a legal right to withhold some of the rent. Section 46(1) of the Act allows landlords 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*.

When a *10 Day Notice to End Tenancy for Unpaid Rent* is received by a tenant, that tenant must, within 5 days, either pay the overdue rent or dispute the notice with the Residential Tenancy Branch. If the tenant fails to do so, the tenant is conclusively presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of the relevant notice.

The tenants are deemed to have received the Notice on January 16, 2023, the fifth day after it sent via registered mail, which means the tenants need to either pay the overdue rent or dispute the Notice by January 23, 2023. The tenants, however, have not

completed either of these actions. Accordingly, I find that the tenants are conclusively presumed to have accepted the end of the tenancy.

Based on the above findings, the landlord is granted an order of possession under section 55(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenants. The tenants have two days to vacate the rental unit from the date of service or deemed service.

Since the application relates to a section 46 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 55(1.1) of the Act. Therefore, the tenants are ordered to pay \$5,470.00 in unpaid rent to the landlord, representing the total amount of rental arrears to March 31, 2023.

Section 72 of the Act permits an arbitrator to order payment of a fee by one party to a dispute resolution proceeding to another party. In this dispute, as the landlord was successful in their application, the tenants are ordered pay the landlord \$100.00.

Pursuant to sections 38 and 72 of the Act, the landlord is ordered to retain the \$1,100.00 security deposit as partial satisfaction of the \$5,570.00 award. A monetary order for the remaining amount of \$4,470.00 is attached to this Decision and must be served on the tenants.

### Conclusion

The application is granted. The landlord is awarded an order of possession and a monetary order in the amount of \$4,470.00.

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 29, 2023

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Residential Tenancy Branch