



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** MNDC MNR MNSD OPR FF

## Introduction

The hearing was originally convened on October x, 2008 and the landlord applicant was not in attendance. Subsequent to the hearing, a review consideration was held on the landlord's application and the decision issued on November x, 2008 found that the landlord had not been able to attend due to circumstances beyond the applicant's control. Therefore a re-hearing was ordered and proceeded today with both parties in attendance.

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated September 3, 2008 , a monetary order for rent and money owed or compensation for loss or damage under the Act and an order to retain the security deposit in partial satisfaction of the claim. Affirmed testimony was given by the parties.

## Issue(s) to be Decided

The landlord was seeking an Order of Possession. The landlord was also seeking a monetary order claiming unpaid rent of \$2,076.00 which includes \$190 arrears remaining for the month of October 2008, \$943.00 rent owed for November 2008 and \$943.00 owed for the month of December 2008.

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed or loss of rent.

Whether or not the landlord is entitled to retain the security deposit in partial satisfaction of the debt.

### **Background and Evidence**

The landlord testified that the rent was \$910.00 but was increase to \$943.00 as of November 1, 2008. The landlord testified that the tenant fell into arrears with the rent and that after the Ten Day Notice to End Tenancy was issued on September 3, 2008, the tenant had paid a portion of the arrears in installments which were accepted by the landlord on a “use and occupancy basis” and did not serve to reinstate the tenancy. The landlord testified that the tenant continued to remain in arrears and now owed \$2,076.00 for which a monetary order was being sought. The landlord testified that an order of possession was also being requested.

The tenant testified that the amount of the arrears were accurately stated by the landlord, but that the tenant intends on making additional payments towards the debt. The tenant testified that he was aware that the tenancy would be ending due to the tenant’s past failure to pay all rental arrears within 5 days of receiving the Ten-Day Notice to End Tenancy on September 3, 2008.

### **Analysis**

Based on the testimony of the parties, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent and that the tenant did not pay the outstanding rent in full and did not apply to dispute the Notice. The tenant therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective

date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to receive compensation for money still owed by the tenant and I find that the landlord has established a total monetary claim of \$2,126.00 comprised of \$190 arrears remaining for the month of October 2008, \$943.00 rent owed for November 2008 and \$943.00 owed for the month of December 2008, and the \$50.00 fee paid by the landlord for this application.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective at 1:00 p.m. on Monday, December 15, 2008. This order must be served on the respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of \$2,126.00 and I order that the landlord retain the security deposit and interest of \$450.64 in partial satisfaction of the claim. Accordingly, I hereby grant the Landlord an order under section 67 for the balance due of \$1,675.36. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated: December, 2008