



# Dispute Resolution Services

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

## Decision

Dispute Codes: OPR MNR FF

## Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order for unpaid rent.

## Issue(s) to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order for the amounts claimed?

Is the landlord entitled to recovery of the filing fee?

## Background and Evidence

The tenancy began on October 1, 2008 as a two-month fixed term tenancy. The landlord and tenant both initialed the section of the tenancy agreement that indicated the tenancy would end on November 30, 2008 and the tenant would move out on that date. Rent in the amount of \$800, including utilities, is payable in advance on the first day of each month. The tenant failed to move out at the end of November 2008. The tenant paid \$400 toward December's rent and the landlord issued a receipt for that amount. The tenant did not pay any rent for January 2008. The landlord seeks an order of possession and a monetary order for \$400 for the remainder of December's rent. The landlord stated in the hearing that they would be willing to forgo any payment of rent or lost revenue for January if the tenant moved out immediately.

The response of the tenant was that in accepting partial rent for December, the landlord reinstated the tenancy. Neither the landlord nor the tenant provided a copy of the receipt for the \$400 paid in December, but the tenant gave affirmed testimony that the receipt did not indicate that the amount was received for use and occupancy only. The

tenant stated that she did not pay the balance of December's rent because the landlord owed the tenant approximately \$400 and the landlord agreed that the tenant would not have to pay the additional \$400 for December's rent. The landlord owed the tenant money for two items: first, since the outset of the tenancy the landlord did not do anything about the kitchen stove, which did not work and needed to be replaced, so the tenant had to order a new stove; and second, the apartment was broken into on Hallowe'en, and a window and door were damaged as a result, and the landlord paid for the window to be replaced but the tenant paid for the repair to the door. The tenant attempted to contact the landlord's agent to pay rent for January 2009 but was unable to do so.

The landlord's testimony in the hearing was that the landlord intended to replace the kitchen stove, which had minor problems but was still working, but they did not do so because the tenant owed money for utilities. In regard to the damaged door, the landlord does not believe there was a break-in, but rather that the tenant caused the damage to the door. The landlord acknowledges that they fixed the window right away because the weather was cold. The landlord believed the window was damaged when something hit it from the outside.

### Analysis

In regard to the order of possession, I find that the landlord did reinstate the tenancy when they accepted the partial payment for December's rent. The landlord is therefore not entitled to an order of possession,

As for the monetary order, I find that the landlord has established a claim for \$400 in unpaid rent for December 2008. The tenant did not obtain a written agreement from the landlord or an order from a dispute resolution officer allowing her to make those deductions from the rent. If the landlord and tenant are unable to reach an agreement regarding the door repair and stove replacement, it is still open to the tenant to make an application for orders regarding repairs, emergency repairs, monies owed by the landlord to the tenant or loss of quiet enjoyment.

I find that the landlord could have reached a settlement with the tenant if they had been

willing to discuss the issues, and therefore the landlord is not entitled to recovery of the filing fee for the cost of their application.

### Conclusion

I dismiss the portion of the landlord's application regarding an order of possession. The tenancy continues on a month-to-month basis under the same terms as set out in the tenancy agreement, until such time as the landlord and tenant agree or are ordered to amend any of those terms.

I grant the landlord an order under section 67 for the amount of \$400 for unpaid rent for December 2008. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated January 5, 2009.