



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

OPR, MNR, MNSD, & FF

### Introduction

This hearing dealt with an application by the landlord seeking an Order of Possession and a monetary claim due to the tenant's failure to pay rent. The landlord testified that the tenant was served with notice of this application and hearing by registered mail on June 19, 2009. The landlord did not provide any documentary evidence respecting service of documents.

Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent. I accept the landlord's oral testimony that the tenant was served by registered mail and I deem the tenant as having been served with the documents. I proceeded with the hearing in the tenant's absence.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

- The landlord presented oral and documentary evidence which establishes the November 1, 2008 for the monthly rent of \$950.00 due on 1st of the month and a security deposit of \$475.00 was paid on November 1, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 9, 2009 with an effective vacancy date of June 19, 2009 due to \$950.00 in unpaid rent.

The evidence submitted by the landlord establishes that the tenant had failed to pay the rent owed for the month of June 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the door of the tenant's rental unit on June 9, 2009 at 5:35 p.m.



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The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

The landlord submitted that the tenant paid the sum of \$475.00 in partial payment of the rental arrears on June 15, 2009 but has subsequently failed to pay the rent owed for July 2009 as well. The landlord requests a monetary claim due to the outstanding rent owed.

## Analysis

I have reviewed all evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on June 12, 2009, and the effective date of the notice is amended to June 22, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I also accept the landlord's evidence that the tenant owes the sum of \$1,425.00 in unpaid rent comprises of \$475.00 for June 2009 and \$950.00 for July 2009. I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$1,475.00** comprised of \$1,425.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the security deposit and interest held of \$476.19 in partial satisfaction of the claim and grant an order for the remaining balance owed of **\$998.81**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.



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## Conclusion

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*.

The landlord's application has been granted and an Order of Possession and a monetary Order issue due to the tenant's breach of the tenancy agreement due to non-payment of rent.

Dated: July 29, 2009.

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Dispute Resolution Officer