



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            OPR, MNR, MND, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and damage to the rental unit and to recover the cost of the filing fee. The landlord also applied to keep all or part of the security deposit.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Ac*. They were given in person on June 16, 2009 and an amended version was given in person on July 06, 2006. This service was witnessed and a witness statement was given by affirmed testimony.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Whether the landlord is entitled to an Order of Possession?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Whether the landlord is entitled to a Monetary Order to recover the unpaid rent and filing fee?

### Background and Evidence

This tenancy started on October 31, 2008. This was a fixed term tenancy for nine months which has since reverted to a month to month tenancy. Rent is \$995.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$500.00 on October 31, 2008.



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

The tenant did not pay rent for June, 2009 of \$995.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on June 11, 2009. This was given personally to the tenant and was deemed to have been served on the same day. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on June 15, 2009. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord testifies that the tenant has not paid rent for July, 2009 of \$995.00. The total amount of rent arrears are \$1,990.00.

The landlord is also requesting a Monetary Order to damages and cleaning of the rental unit of \$360.00. The landlord has requested an Order of Possession to take effect as soon as possible.

## Analysis

The tenant did not appear at the hearing, despite having been served a Notice of the hearing in person on two occasions; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for June and July, 2009 of \$1,990.00. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's security deposit in partial payment of the rent arrears.

The tenant has not yet moved from the rental unit and I find that the landlord has acted prematurely with their application to recover any cleaning or repair costs from the tenant as the tenant still has opportunity to clean and repair any damages to the unit before they move out. Therefore I dismiss this portion of the landlords claim with leave to reapply.

As the landlord has been largely successful in this matter, they are entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the Act.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for June and July, 2009	\$1,995.00
Less security deposit and accrued interest	(-\$501.27)



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

Total amount due to the landlord	\$1,543.73
----------------------------------	------------

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. 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 pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 and grant the landlord an order of possession.

## Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,543.73**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: July 13, 2009.

---

Dispute Resolution Officer