



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent to the tenants separately on June 17, 2009 by registered mail.

Both parties appeared, one of the tenants dialed into the call and left before any evidence was given. The hearing proceed in his absence. The other parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and witnesses and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### 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?
- Whether the landlord is entitled to a Monetary Order to recover the unpaid rent and filing fee?

### Background and Evidence

This tenancy began around August 05, 2007. The present landlord took over the property in August 2008. Rent for this rental property is \$700.00 per month due on the 1<sup>st</sup> of each month. The tenants paid a security deposit of approximately \$150.00 when they first moved in but the tenant attending was unsure of the date this was paid.

The landlord claims that the tenants paid the rent for August but since September 2008 they have not paid any rent. The landlord testifies that he asked the tenants if they wanted him to fix the property up but the tenants refused as they did not want to have to pay more rent. The landlord

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testifies that as they tenants had not paid rent since September 2008 he issued a 10 day Notice to End the tenancy on January 18, 2009. This was served in person to one of the tenants. This Notice indicated that the tenants had five days to either pay the rent or dispute the Notice or the tenancy would end on January 28, 2009. The tenant said they had a hearing in January, 2009 but he was unsure of the details.

The landlords' property manager gave his testimony that he went to collect the rent in September and was told by the tenants that they needed more time. Since that date the property manager testifies that he called round on numerous occasions to collect the rent but the tenants did not answer the door.

The tenant testifies that they had their rent but the landlord did not come to collect it and they did not have an address for the landlord to send it to him. The tenant testifies that the rental property needed repairs to the roof and flooring. The house was in a state and not fit to live in. the tenant states that they will be moving from the property at the end of July 2009. The tenants have applied for a separate application concerning repairs to the property and this evidence was not relevant at today's hearing.

## Analysis

Based on the testimony, evidence and balance of probabilities, I find that the landlord has established his claim for unpaid rent. I find that the landlord is entitled to recover rent arrears for 11 months from September 2008 to July 2009, of \$7,700.00.

As the landlord has been successful in this matter, they are also entitled to recover the \$100.00 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 11 months	\$7,700.00
Total amount due to the landlord	\$7,800.00

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



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rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the rent 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 **\$7,800.00**. The order must be served on the tenants 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 to take effect on or before **July 31, 2009**. This order must be served on the tenants 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 17, 2009.

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Dispute Resolution Officer