



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, MNDC, O, 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, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 19, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on June 24, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords' agent appeared, gave affirmed testimony, was provided the opportunity to present his 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?
- Is the landlord entitled to a Monetary Order for loss of revenue?
- 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?



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## Background and Evidence

This tenancy started on August 15, 2008. This is a fixed term tenancy which is due to end on July 31, 2009. Rent is \$925.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$466.50 on August 12, 2008.

The tenant owed an unpaid late payment for May, 2009 of .70 cents, the balance of rent for June, 2009 of \$525.00, a laundry charge of \$15.00 for June, 2009 and a late payment penalty for June, 2009 of \$25.00. The total amount outstanding for June, 2009 totals \$565.70. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on June 03, 2009. This was posted to the tenants' door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on June 16, 2009. The tenant did not pay the outstanding rent or dispute the Notice within five days. The tenant made a payment on June 12 of \$400.00, a payment on June 19 of \$200.00 and a payment on June 24 of \$65.00. This left a credit of \$99.30 towards rent for July, 2009. On July 01 the rent was again due of \$925.00 plus a laundry charge of \$15.00. The tenant has a credit of \$99.30 which reduces the rent balance owed to \$840.70. The tenant paid \$375.00 on the due date and on July 07 she paid \$280.00. The landlord has also applied a late fee for July of \$25.00. This has left the balance of rent arrears at \$210.70 not \$310.70 as suggested by the landlord in her submissions.

The landlord has applied to retain part of the tenants' security deposit in partial payment towards the rent arrears. The landlord has applied for an Order of Possession to take effect as soon as possible.

## Analysis

The tenant did not appear at the hearing, despite having been sent a Notice of the hearing; she declined to collect this package from Canada Post. Therefore, in the absence of any evidence

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from the tenant, I find that the landlord is entitled to recover rent arrears and additional charges of \$210.70 pursuant to s. 67 of the *Act*. As the landlord has been successful in this matter, they are also entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

Outstanding rent, laundry fees and late fees	\$210.70
Total amount due to the landlord	\$260.70

The landlord has applied to retain part of the tenants' security deposit of \$466.50 plus accrued interest of \$2.71, to recover the amount owed by the tenant. **I Order** the landlord to retain **\$260.70** from the tenants' security deposit which leaves the total amount left on the deposit at **\$208.51**. This sum must be returned to the tenant within 15 days of receiving her forwarding address or applying for Dispute Resolution to retain the balance for any damages or loss under the *Act*. The landlord has withdrawn her application for Money owed for damage or loss under the *Act* at this time as it would be premature to apply for any loss of revenue for August, 2009.

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. This amount has been reduced as the tenant has paid some money owed since the landlord filed their application. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$260.70**. The order must be



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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 29, 2009.

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Dispute Resolution Officer