



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

The landlord's agent 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 tenants, 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 an Order of Possession for unpaid rent?
- 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 filing fee?

### Background and Evidence

This tenancy started on March 15, 2009. The rent for this unit is \$850.00 per month due on the 1<sup>st</sup> of each month. This was a fixed term tenancy to end on March 31, 2010. The tenants paid a security deposit of \$425.00 on March 09, 2009.

The landlords' agent testifies that the tenants owed a balance of rent for March, 2009 of \$17.70 and did not pay rent for August, 2009 of \$850.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on August 04, 2009. This was placed in the tenant's mailbox and was

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deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on August 14, 2009. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have not paid rent for September, 2009 to the amount of \$850.00. The landlord has requested to amend his application to recover the unpaid rent for October, 2009 of \$850.00. The total amount of unpaid rent is now \$2,567.70. I have allowed the landlords amended claim for October, 2009 due to the time factor for the hearing date.

The landlord also seeks late fees for August, September and October, 2009 of \$75.00. The tenancy agreement contains a separate clause that states the landlord will charge a tenant \$25.00 per month when rent is not paid on the due date.

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

## Analysis

The tenants did not appear at the hearing, therefore, in the absence of any evidence from the tenants, I find that the landlord is entitled to recover rent arrears for March, August, September and October 2009 of \$2,567.70 pursuant to s. 67 of the *Act*. 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.

As the landlord has been successful in this matter, he is also 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 March, August, September and October, 2009	\$2,567.70
Filing fee	\$50.00
Less security deposit	(-\$425.00)
Total amount due to the landlord	\$2,267.70



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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 amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,267.70**. 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: October 07, 2009.

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Dispute Resolution Officer