



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes:

**OP, MNR, MNSD, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and fees, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The female landlord employee testified that on October 28, 2009 she personally served the tenant with copies of the Application for Dispute Resolution and Notice of Hearing at the rental unit some time in the mid-afternoon.

These documents are deemed to have been served in accordance with section 89 of the *Act*, however the tenant did not appear at the hearing.

### Preliminary Matter

At the start of the hearing the landlord withdrew the portion of the claim requesting compensation for unpaid late fees.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

May the landlord retain the deposit paid?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy agreement requires the tenant to pay monthly rent of \$1,300.00 due on the first day of each month. A deposit in the sum of \$650.00 was paid on October 6, 2008.

The maintenance supervisor stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of October 12, 2009, was served to the

tenant on October 28, 2009; the witness then stated that he served the Notice on October 2, 2009. This witness initially testified that the Notice was posted to the door of the rental unit; the witness then stated that the Notice was served by pushing it under the door of the rental unit on October 2, 2009 at 2:00 pm. The landlord testified that subsequent to this service he has talked with the tenant on two occasions in relation to the unpaid rent owed.

The landlord testified that the tenant has not paid any rent for October to December 2009, inclusive and is claiming compensation in the sum of \$3,900.00.

### Analysis

Section 81 of the Act stipulates that service of a Notice to End Tenancy may be served by a number of methods; however, service by pushing a Notice under the door of the rental unit is not an acceptable method. I also found the witness' testimony in relation to service of the Notice to End Tenancy inconsistent, as initially he thought he had posted the Notice to the door. Therefore; I find that the Notice to End Tenancy issued on October 2, 2009 has not been served as required by section 88 of the Act, which provides:

**88** All documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service prescribed in the regulations.

The landlord is at liberty to properly serve the respondent and make further application for dispute resolution requesting an order of possession.

I find that the landlord is entitled to compensation for unpaid rent for October to December 2009 inclusive in the sum of \$3,900.00.

I find, as provided by section 72(2) of the Act, that the landlord may retain the deposit plus interest held in trust in the sum of \$652.32 in partial satisfaction of the monetary claim.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

### Conclusion

I find that the landlord has established a monetary claim, in the amount of \$3,950.00 in compensation for unpaid October, November and December 2009 rent and the filing fee costs of \$50.00 paid by the landlord for this Application for Dispute Resolution.

I order that the Landlord retain the deposit and interest of \$652.32 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$3,297.68**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord has withdrawn the portion of the application requesting late fee payment.

The request for an Order of possession has been dismissed with leave to reapply.

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: December 10, 2009.