



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPQ, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution to obtain an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent, the tenant and her legal counsel.

At the outset of the hearing, I noted to the landlord that I had not received a copy of the 2 Month Notice to End Tenancy and with the tenant's agreement I asked for the landlord to provide me a copy of the notice at the close of the hearing.

At the end of the hearing a settled proposal was suggested. The landlord's agent did not have authority to accept or reject the proposal. I gave the agent until the end of business on Wednesday August 18, 2010 to provide a written response to the settlement proposal, with the tenant's consent.

The Chairperson of the Board of Directors for the agency provided a written response received by the Residential Tenancy Branch on August 18, 2010 declining the settlement offer and is attached to this decision.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession as the tenant no longer qualifies for the rental unit; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 49.1, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a 2 Month Notice to End Tenancy because the Tenant Does Not Qualify for Subsidized Rental Unit dated April 27, 2010 with an effective date of June 30, 2010. The landlord notes that the notice was served to the tenant on April 28, 2010 at 9:50 a.m. personally.

The landlord testified that the reason the tenant does not qualify for the subsidized rental unit is that the tenant no longer has her children living with her and that she has not had them living with her since November, 2009 and had failed to inform the landlord of the change in the family unit size.

The tenant did not file an application to dispute the notice within 15 days of receiving the notice to end tenancy. The tenant provided letters of support from her social worker and family support worker requesting that the tenancy not end as the social worker is working with the tenant to have her children returned within the next few weeks.

The landlord requests payment of rent for the months of July and August 2010 at the market rate of \$1593.00, however the landlord confirms that subsidy for July 2010 has already been received and that the tenant did not apply for subsidy effective August 2010 and such no subsidy has been received for August 2010.

### Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on April 28, 2010 and the effective date of the notice is June 30, 2010. I accept the evidence before me that the tenant's family unit decreased in November 9, 2009 and she failed to inform the landlord of this change in family unit size.

Based on the foregoing, I find that the tenant is conclusively presumed under section 49.1(6) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find the landlord is entitled to rent for the month of July 2010 in the amount of \$308.00 and for the month of August 2010 in the amount of \$1593.00. However, the landlord has failed to provide any evidence as to the amount of a security deposit, I therefore dismiss the portion of the landlord's application to retain the security deposit.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,951.00** comprised of \$1,901.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: August 23, 2010.

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Dispute Resolution Officer