



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR

### Introduction

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

The hearing was conducted via teleconference and was attended by the landlord only, the tenant did not attend.

The matter was originally considered under the Direct Request procedure, however the Dispute Resolution Officer (DRO) adjourned the matter to a participatory hearing due to the confusing nature of the account ledger submitted by the landlord.

The landlord testified that she had not received the interim decision from the previous DRO as it was addressed with an incorrect postal code. She states that she had not heard a decision and contacted the Residential Tenancy Branch who provided her with the decision and notice to reconvene the matter to a participatory hearing until August 3, 2010.

The landlord further stated that she provided the tenant with the notice of the hearing and her evidence by putting it in the mail box at the rental unit on August 4, 2010. Based on the landlord's testimony and the fact that the tenant had submitted his own evidence I accept the landlord has served the documents to tenant in accordance with the *Residential Tenancy Act (Act)*.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to sections 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted a tenancy agreement signed by the parties on April 17, 2008 for a month to month tenancy that began on July 1, 2008 for a monthly rent of \$1,300.00 due on the 1<sup>st</sup> of the month, with a security deposit of \$600.00 and a pet damage deposit of \$600.00 paid by the tenant.

Through his written submission the tenant suggests the rent amount was \$1,100.00 per month. The tenant has submitted a tenancy agreement for a 3 year fixed term tenancy effective November 1, 2009 with a monthly rent of \$1,100.00; the agreement is not signed by both parties.

The landlord also submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 30, 2010 with an effective vacancy date of July 10, 2010 due to \$21,150.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for any month during the tenancy except for July, 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served to the tenant's mother who appeared to be living in the rental unit on June 30, 2010. The landlord has submitted written confirmation that this service was witnessed by a third party.

The landlord's evidence confirms the tenant had paid to the landlord a total of \$13,950.00 in the time period of June 1, 2008 to May 31, 2010. The landlord also testified the tenant has not paid any rent since the 10 Day Notice was issued.

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 apply to dispute the Notice to End Tenancy within five days.

### 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 June 30, 2010 and the effective date of the notice is July 10, 2010. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

In relation to the matter of the amount of rent that is due, based on the signed tenancy agreement and in the absence of testimony from the tenant I accept the landlord's evidence that the monthly rent is \$1,300.00. As the tenancy began on July 1, 2008 the tenant was responsible for 27 months of rent or a total of \$35,100.00.

Based on the landlord's evidence and testimony and in the absence of any contrary testimony from the tenant I accept that the landlord received from the tenant for rent for the above noted time period of 27 months a total amount of \$13,950.00. As such, I find the tenant has rental arrears in the amount of \$21,150.00.

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 I grant a monetary order in the amount of **\$21,150.00** comprised of rent owed.

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: September 10, 2010.

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Dispute Resolution Officer