



# 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 an Application for Dispute Resolution by the Landlord for an order of possession and a monetary order for unpaid rent. The Application of the Landlord was originally made through the Direct Request process, however, the Application was adjourned to a participatory hearing, which was held today.

Although served with the Application for Dispute Resolution and Notice of Hearing on September 3, 2010, by leaving a copy in the mailbox of the rental unit occupied by the Tenant, the Tenant did not appear. The Agent for the Landlord testified that when she delivered the documents the Tenant would not open the door and the Agent put them in the mailbox. The Agent further testified that the Tenant has been changing her phone number often and not communicating with the Agent or Landlord. I find that the Tenant is attempting to avoid service. I find that the Application and Notice of Hearing have been sufficiently given or served for the purposes of this Act.

An Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Based on the affirmed testimony of the Agent for the Landlord, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent in person on July 2, 2010. A third party witnessed the service and has a signed statement to this effect.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant did not apply to dispute the Notice. The evidence of the Landlord is that the Tenant has failed to pay rent for several months.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I allow the Landlord to amend the Application to include rent and late fees the Tenant has not paid since the filing of the Application. I also allow the Application to be amended to include a claim against the security deposit and interest, and to recover the filing fee for the Application.

Therefore, I find that the Landlord has established a total monetary claim of **\$6,863.76** comprised of rent in the amount of \$6,673.76, late fees of \$140.00 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$439.20** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$6,424.56**.

This order 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: October 14, 2010.

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Dispute Resolution Officer