



# 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 tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on September 18, 2010. Mail receipt numbers were provided by the landlords' agent. The tenant was deemed to be served the hearing documents on September 23, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*. The tenant states he did not receive this mail and the landlord sent him the hearing documents again by fax.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, and in written form, documentary form, and to make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the security deposit?



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## Background and Evidence

The landlord testifies that this month to month tenancy started on November 01, 2009. Rent for this unit is \$550.00 per month and is due on the first of each month. The tenants paid a security deposit of \$275.00 on November 01, 2009.

The landlords' agent testifies that the tenant did not pay rent for August 2010 of \$550.00 on the day it was due. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on September 01, 2010. This was posted to the tenant's door on September 01, 2010. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on September 11, 2010. The tenants did not pay the outstanding rent or dispute the Notice within five days. The tenant did not pay rent for September or October, 2010 on the days it was due. The tenant did pay rent of \$600.00 on October 03, 2010. The total amount of unpaid rent is now \$1,050.00.

The landlord has applied to retain the tenant's security deposit of \$275.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect on October 31, 2010.

The tenant does not dispute the landlords testimony that he owes rent for August and September, he states he has been trying to catch up with his rent.

## Analysis

Section 26 of the *Act* states a tenant must pay rent on the day it is due whether or not the landlord has complied with the *Act* (my interpretation). Consequently, I find the landlord is entitled to recover rent arrears for August and September, 2010 of **\$1,050.00** pursuant to s.67 of the *Act*.



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I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit of \$275.00 in partial payment of the rent arrears.

As the landlord has been successful in this matter, she 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 August and September, 2010	\$1,050.00
Filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>825.00</b>

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 has ended. As the Notice was posted to the tenants' door it was deemed to have been served three days after posting. Therefore, the effective date of the Notice has been amended to September 14, 2010 pursuant to section 53 of the *Act*. I grant the landlord an order of possession pursuant to section 55 of the *Act*.

## Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$825.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.



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I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on October 31, 2010**. 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 22, 2010.

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Dispute Resolution Officer