



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, OPC, MND, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on cause, and monetary orders for unpaid rent, for damages to the rental unit, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and 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

The Landlord testified that the Tenant has breached the tenancy agreement by repeatedly paying her rent late, among other causes. The Landlord served the Tenant with a one month Notice to End Tenancy on September 29, 2010, with an effective date of October 31, 2010. The Notice explains that the Tenant had 10 days to dispute the Notice, and that if the Tenant does not dispute the Notice she must vacate the rental unit by the effective date.

The Landlord testified that the Tenant had failed to pay rent of \$700.00 per month, for September, October and November of 2010, and had also been late paying her August rent.

The Tenant testified that she had not disputed the one month Notice to End Tenancy and had not moved out of the rental unit.

The Tenant further testified that she had paid rent to the Landlord's sister for September and did not pay in October since the rent money was stolen from her. She agreed she had not paid rent for November.

The Landlord denied that her sister had been paid rent by the Tenant.

### Analysis

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

The Tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 47(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 **at 1:00 p.m. November 24, 2010**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I accept the evidence of the Landlord that the Tenant has failed to pay rent for September, October and November of 2010. Therefore, I find that the Landlord has established a total monetary claim of **\$2,150.00**, comprised of \$2,100.00 in unpaid rent and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of \$350.00 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,800.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord's claim for damages is premature, as the Tenant may still make repairs to the rental unit before she vacates. This claim is dismissed with leave to reapply.

### Conclusion

The Tenant failed to pay rent on time in the last four months and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim and is granted a monetary order for the balance due. The Landlord may apply for damages in the future.

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: November 22, 2010.

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Dispute Resolution Officer