



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR, MNR, 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 and to recover the cost of the filing fee. At the outset of the hearing it was determined that the tenant has moved from the rental unit on or about September 30, 2010 therefore the landlord withdraws his application for an Order of Possession

The landlords' agent testifies that she served the hearing documents to the tenant at the dispute address and then again at the tenants' new address on September 30, 2010. I am satisfied that the tenant has been served with Notice of this hearing in accordance with s. 89 of the Act.

The landlord and his agent appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?



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## Background and Evidence

This tenancy started on August 01, 2009. This was a fixed term tenancy which expired on August 01, 2010 and reverted to a month to month tenancy at this time. Rent for this unit is \$695.00 per month and was due on the first of each month.

The landlord testifies that the tenant owed rent of \$2,455.00 on September 01, 2010. He states the tenant had not paid rent for February, July and September, 2010. The landlord also states the tenant did not pay his security deposit of \$350.00. A 10 Day Notice to End Tenancy was served to the tenant in person on September 16, 2010. The amount on this Notice indicates that the outstanding rent is \$2,455.00. The effective date of the Notice was September 26, 2010 however the tenant did not pay the rent within the five days given on the Notice and did not move out on the effective date of the Notice.

The landlords agent states she posted a 24 hour Notice of entry to the tenants' door and upon entering his unit she found that he had moved most of his belongings from the rental unit sometime around the end of September or beginning of October, 2010. The tenant has not returned the keys to the landlord for his unit.

The landlord also seeks to recover rent for October, November and December, 2010 as he has not been able to re-rent the unit as the tenant has not returned the keys and left the unit in a terrible mess.



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## Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears of **\$2,455.00** pursuant to s.67 of the *Act*. I further find as the tenant did not return the keys to the rental unit this prevented the landlord re-renting the unit for October, 2010, consequently I find the landlord is also entitled to recover unpaid rent for October, 2010 to the sum of **\$695.00** pursuant to s.67 of the *Act*.

The landlord has also applied to recover unpaid rent for November and December, 2010 to the sum of \$1,390.00; however, s. 7 of the *Act* states a landlord must take steps to mitigate or minimize his loss. As the landlords' agent confirmed that the tenant did move from the rental unit sometime around the end of September or beginning of October, 2010, the landlord could have entered the unit and prepared it for rental after this time. As the landlord did not do this he has not shown how he has mitigated his loss in this matter and is not therefore entitled to recover rent for November and December, 2010.

As the landlord has been partially successful in this matter, he 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:

Rent arrears up to September 01, 2010	\$2,455.00
Subtotal	\$3,150.00
Plus filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$3,200.00</b>

## Conclusion



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I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,200.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: November 03, 2010.

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Dispute Resolution Officer