



# 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 and to recover the cost of the filing fee. At the outset of the hearing the landlords' agent withdrew her application for a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit.

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 October 21, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on October 26, 2010 the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords' agent appeared, gave affirmed testimony, was provided the opportunity to present her 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 an Order of Possession?



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## Background and Evidence

The undisputed testimony of the landlords' agent states that this month to month tenancy started on October 01, 2009. Rent for this unit is \$995.00 which increased to \$985.00 on November 01, 2010. The tenant paid a security deposit of \$477.50 on September 23, 2009.

The landlords' agent testifies that the tenant has been served numerous 10 Day Notices for unpaid rent since May, 2010. The tenant was served another 10 Day Notice on September 02, 2010 due to \$2,437.50 in unpaid rent. This was posted to the tenants' door and was deemed served on October 05, 2010. The Notice states that the tenant has five days to pay the outstanding rent, or dispute the Notice or the tenancy will end on October 12, 2010.

The landlords' agent testifies that the tenant paid \$2,450.00 on October 22, 2010 and \$1,010.00 on November 05, 2010. She states that both these amounts were accepted for use and occupancy only and the landlord indicated this on the rent receipts.

The landlord seeks an Order of Possession to take effect on December 31, 2010. The landlord also seeks to recover the \$50.00 filing fee paid to file this application.

## Analysis

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. However, the tenant paid the outstanding rent



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on October 22, 2010 and November 05, 2010 which the landlord accepted for use and occupancy only and therefore did not reinstate the tenancy.

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 and grant the landlord an order of possession pursuant to section 55 of the *Act*.

## Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **December 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.

I find that the landlord is entitled to be reimbursed the **\$50.00** cost of filing this application pursuant to section 72(1) of the *Act* and a Monetary Order has been issued for this amount. This Order must be served on the tenant and is enforceable through the Provincial Court (small claims) 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 18, 2010.

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Dispute Resolution Officer