



# 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 seeking an order of possession and a monetary order. The Application was originally considered through the Direct Request process, however it was determined that a participatory hearing was required

The hearing was conducted via teleconference and was attended by the landlord only. The tenant did not attend.

The landlord submitted documentary evidence confirming the tenant was served with the notice of this hearing via registered mail on November 3, 2010. Section 90 of the *Residential Tenancy Act (Act)* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on documentation submitted by the landlord, I find that the tenant has been served with the notice of hearing documents.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee paid by the landlord for this Application, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on August 27, 2008 for a 6 month fixed term tenancy beginning on September 1, 2008 converting to a month to month tenancy on March 1, 2009 for a monthly rent of 546.00 due on the “business” day of the month and a security deposit of \$273.00 was paid;
- A copy of a Notice of Rent Increase issued by the landlord on May 26, 2010 with an effective date of September 1, 2010 increasing the rent to \$584.32;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on October 5, 2010 with an effective vacancy date of October 19, 2010 due to \$1,735.84 in unpaid rent; and
- A detailed accounting of the months of rent and amounts due; payments made by the tenant since the issuance of the 10 Day Notice to End Tenancy for Unpaid rent; and calculations of total arrears.

As the tenancy agreement stated only that rent was due on the “business” day of the month the landlord provided testimony that the agreement was that rent was due on the “first business” day of each month.

Documentary evidence filed by the landlord indicates that the tenant initially failed to pay rent owed for the months of July, August, and September 2010 and that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on October 5, 2010 and that this service was witnessed by a third party.

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 apply to dispute the Notice to End Tenancy within 5 days.

The landlord’s additional evidence shows the tenant provided payment to the landlord by November 3, 2010 totaling \$1,352.40 which provided full payment for the months of July and August 2010 rent and \$220.00 towards September 2010 rent.

The landlord’s evidence shows the tenant has not paid the balance of September 2010 rent in the amount of \$364.32 nor the rent for October or November 2010, for total rental arrears of \$1,532.96. In accordance with the tenancy agreement the landlord also requests \$125.00 in late fees based on \$25.00 per month for July, August, September, October and November 2010.

The landlord also seeks recovery of costs for sending documents via registered mail in the amount of \$20.54.

### Analysis

Section 46 of the *Act* allows the landlord to end a tenancy for unpaid rent any day after the day the rent is due by issuing a notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I accept the landlord’s evidence that he served the notice on the tenant on October 5, 2010 by posting it on the rental unit door. I also accept the tenant failed to pay the rent within the 5 days allowed under Section 46 or submit an application to dispute the notice. As a result, I find the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates.

Conclusion

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

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of \$1,707.96 comprised of \$1532.96 rent owed; \$125.00 late charges and the \$50.00 fee paid by the landlord for this application.

I order that the landlord may retain the deposit and interest held of \$274.42 in partial satisfaction of the claim and grant a monetary order for the balance due of \$1,433.54. This order must be served on the **tenant** and 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: November 25, 2010.

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Dispute Resolution Officer