



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

For the tenant CNR, O

For the landlord - OPR, MNR, MNSD, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together. The tenant seeks to cancel the 10 day Notice for unpaid rent. The landlords seek an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent, an Order to keep the tenants security deposit and to recover their filing fee.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and 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 tenant entitled to cancel the Notice to End tenancy?
- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover rent owed and late fees?
- Is the landlord entitled to keep the security deposit?



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## Background and Evidence

Both parties agree that this tenancy started on July 01, 2010. Rent for this unit is \$2,750.00 per month and is due on the first of each month. This is a fixed term tenancy for three years and is due to expire on June 30, 2013. The tenant paid a security deposit of \$1,375.00 on June 30, 2010.

The landlord testifies that the tenant has not paid the balance of rent owed for October of \$1,750.00 and failed to pay rent for November, 2010 on the day it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on November 15, 2010. This was handed to the tenant in person. This Notice states that the tenant owes rent for October and November, 2010 of \$4,500.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 25, 2010. The tenant paid \$1,000.00 on November 28, 2010 and this was accepted by the landlords for use and occupancy only and did not reinstate the tenancy. Since that time the tenant has not paid rent for December, 2010 on the day it was due and the landlords seek to amend their application to recover this rent of \$2,750.00 also. The total amount of unpaid rent is now \$6,250.00.

The landlords have applied to retain the tenants' security deposit of \$1,375.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The tenant has applied to cancel the Notice to End Tenancy. The tenant states he does not dispute that he owes rent to the landlord and states he has been owed wages from his employer who has not paid him. He states that he will be able to pay the balance owed if he can stay at the unit until December 31, 2010. He regrets that he has fallen into arrears.

## 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



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pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days; however, he did apply to dispute the Notice within five days.

Based on the foregoing, I find that as the tenant does not dispute that he owes rent and did not pay the outstanding rent within five days of receiving the Notice to end tenancy he 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.

A tenant must pay rent on the day it is due under the tenancy agreement pursuant to s. 26 of the *Act*. Therefore, I find that the landlords are entitled to recover rent arrears for October, 2010 of **\$1,750.00** and November, 2010 of **\$1,750.00** pursuant to s.67 of the *Act*. I have allowed the landlord's amendment to their claim to include unpaid rent for December, 2010 of **\$2,750.00** as the tenant continues to reside at the rental unit and would be aware that rent was due on December 01, 2010 and he failed to pay it. Therefore, the amount of outstanding rent is now **\$6,250.00**.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$1,375.00 in partial payment of the rent arrears.

As the landlords have been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a monetary order for the balance owing as follows:

Outstanding rent for October, November and December, 2010	\$6,250.00
Subtotal	\$4,875.00
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$4,925.00</b>



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## Conclusion

The tenants' application is dismissed. The 10 Day Notice to End Tenancy for unpaid rent will remain in force and effect.

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,925.00**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. 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: December 08, 2010.

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Dispute Resolution Officer