



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes      OPR MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Tenants.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail to each Tenant on November 20, 2010. The Canada Post tracking numbers were provided in the Landlord's evidence. Each Tenant is deemed to be served the hearing documents on November 25, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Landlord's Agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. No one appeared the teleconference hearing on behalf of the Tenants despite each Tenant being served notice of today's hearing in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

1. Have the Tenants breached the Act, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to an Order of Possession and a Monetary Order as a result of that breach?

### Background and Evidence

The parties entered into a month to month tenancy agreement effective April 1, 2010. Rent is payable on the first of each month in the amount of \$750.00. On April 1, 2010 the Tenants paid a security deposit of \$375.00.

The Agent testified that when the Tenants failed to pay their October 1, 2010 rent a 10 Day Notice to End tenancy was posted to their door on October 4, 2010. As of today's

date the Tenants have failed to pay anything towards rent for October, November and December for the accumulated balance owing of \$2,250.00 (3 x \$750.00).

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

**Order of Possession** - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenants failed to pay the rent within 5 days after receiving this notice, and that the Tenants are 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 pursuant to section 46(5) of the *Act*. Therefore I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$2,250.00 which consists of rent owed for October, November and December 2010, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I approve the Landlord's request for a monetary order.

The Landlord has succeeded with her application therefore I award recovery of the filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit as follows:

Unpaid Rent for October, November & December 2010 (3 x \$750.)	\$2,250.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$2,300.00</b>
Less Security Deposit of \$375.00 plus interest of \$0.00	-375.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,925.00</b>

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,925.00**. The order must be served on the respondent Tenants 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: December 10, 2010.

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Dispute Resolution Officer