



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession and a monetary order for unpaid rent and to recover the filing fee for the Application.

One Tenant was served with the Application for Dispute Resolution and Notice of Hearing in person on December 16, 2010, and the other Tenant was served by registered mail, sent on December 17, 2010. When using registered mail, the Act deems the Tenant was served five days later, on December 22, 2010. Nevertheless, neither Tenant appeared at the hearing. I find that the Tenants were duly served in accordance to the Act.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Based on the affirmed testimony and documentary evidence of the Landlord, I find that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of rent on December 4, 2010 by posting on the door. This was witnessed by a third party.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the monthly rent is \$1,145.00. He further testified that the Tenants paid \$600.00 in rent on December 9, 2010, and \$300.00 on December 23, 2010. The Landlord also testified that the Tenants paid no rent for January 2011.



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## Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenants have not paid all the rent to the Landlord and did not apply to dispute the Notice, and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, December 17, 2010.

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

I also find that the Tenants have not paid rent for January 2011 and the Landlord will suffer a loss of rent for the month. Therefore, under section 64 of the Act I allow the Landlord's claim to be amended to include one additional month of rent.

As the Landlord suffered a loss and is still holding the security deposit, I allow him to amend the Application to include a claim against the security deposit, pursuant to sections 64 and 72 of the Act.

I find that the Landlord has established a total monetary claim of \$1,440.00 comprised of \$245.00 owed for December of 2010, \$1,145.00 due for January 2011, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of \$572.00, paid in 2010 by the Tenants, in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$868.00**. This order 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: January 11, 2011.

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Residential Tenancy Branch