



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession and a Monetary Order for unpaid rent, to keep the security deposit, and to recover the cost of the filing fee from the Tenant.

The Tenant filed seeking a Monetary Order to cancel the 10 Day Notice to End Tenancy.

Service of the hearing documents by the Landlord to the Tenant was done in accordance with section 89 of the *Act*, served personally on January 10, 2011. The Tenant confirmed receipt of the Landlord's hearing documents; however he did not receive a copy of the Landlord's evidence.

Service of the hearing documents by the Tenant to the Landlord was done in accordance with section 89 of the *Act*, in person on January 5, 2011. The Landlord confirmed receipt of the hearing documents and the Tenant's evidence.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy 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

I heard undisputed testimony the parties entered into a verbal month to month tenancy agreement in approximately May 2008. The monthly rent is payable in the amount of \$750.00 and the Tenant paid a security deposit of \$375.00 on approximately April 22, 2008 (about one week prior to the start of the tenancy).

The Landlord testified his tenant is a very nice guy and that he told the Tenant he could pay his rent every two weeks when he was paid. Then the Tenant began to short pay his rent so the Landlord kept track and told the Tenant to pay when he could. The Landlord had the Tenant sign two documents which he included in his evidence which confirm the payments and outstanding amounts owed by the Tenant. One document was signed by both parties on December 10, 2009 and the other on November 7, 2010. He did not provide the Tenant with another copy of these documents as evidence because he gave the Tenant copies when they signed them.

The Landlord stated the Tenant agreed to pay him double rent payments to get caught up on the balance owed but he never followed through with that. He did not pursue the payments earlier because the Tenant is a nice guy and said he would pay when he got work. Then the Tenant said he got a job with the Olympics and that he did not get paid so he is going through labour court to get money. Then he started working at the city and agreed to make payments again but he was fired. The Landlord stated that he did not want to evict the Tenant at Christmas time so he waited until the end of December

to issue the Notice. He explained to the Tenant that he has a mortgage to pay and he needs to collect rent. The Tenant has not paid anything towards rent for January 2011 or December 2010 and paid \$350.00 on November 12, 2010 after the payment statement was signed on November 7, 2010. All other outstanding amounts are listed on the two payment statements. The Landlord is seeking the Order of Possession and the Monetary Order.

The Tenant testified and stated "well I guess I'm moving out this weekend and will be out by the first of the month". When asked why he has not paid his rent he stated that he is currently awaiting his employment insurance benefits. He advised that this has never been an issue for the Landlord previously and the Landlord has always told him not to worry about it. He confirmed he signed the two payment statements and that he received copies of the documents at the time or shortly after he signed them. He said the Landlord told him they needed these documents for his property assessment. He states he does not know how much rent he owes because he does not know where his copies of the two statements are. He confirmed did not pay anything for January 2011 or December 2010 rent.

### Analysis

All of the testimony and documentary evidence was carefully considered.

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 Landlord 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.

## Landlord's Application

The Tenant argued that he did not receive a copy of the payment statements with the Landlord's application for dispute resolution; however he did confirm he had signed both documents and had been given a copy of each document at the time of or shortly after signing them. After careful consideration, I find the Tenant was aware there was an accumulated outstanding balance of rent and that by signing these documents he acknowledged the debt. That being said, I have considered these two statements in my decision. In order to uphold the principles of natural justice I have attached a copy of the said documents to this decision.

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit. In this case the evidence supports the parties entered into a verbal tenancy agreement and rent was to be paid bi-weekly for the total month amount of \$750.00.

After careful consideration of the 10 Day Notice to End Tenancy dated December 30, 2010, I find that it was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice pursuant to section 46(1) of the *Act* *that* the tenant failed to pay the rent in full within 5 days after receiving this notice. Therefore I approve the Landlord's request for an Order of Possession.

The evidence supports the Tenant failed to pay his rent in accordance with section 26 of the Act that stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the aforementioned I find the Landlord has proven the test for damage or loss, as listed above, and I hereby approve his request for a monetary order.

The Landlord has been successful with his application, therefore I award recovery of the \$100.00 filing fee.

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

Accumulated unpaid rent as per the December 10, 2009 statement	\$3,880.00
Accumulated unpaid rent as per the November 7, 2010 statement	5,250.00
Unpaid rent for December 2010 and January 2011 (2 x \$750.00)	1,500.00
Filing fee	100.00
LESS: November 12, 2010 payment	<u>-350.00</u>
<b>Monetary Order in favor of the Landlord</b>	<b>\$10,380.00</b>

### **Tenant's Application**

I have upheld the 10 Day Notice to End Tenancy dated December 30, 2010, above and granted an Order of Possession. Therefore, the Tenant's application to cancel the Notice is now moot and hereby dismissed.

### Conclusion

I HEREBY 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 Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$10,380.00**. The order must be served on the respondent Landlord 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: January 28, 2011.

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Residential Tenancy Branch