



# Dispute Resolution Services

Page: 1

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, a monetary order for unpaid rent and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Has the Tenant 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 of the Landlord and affirmation of the Tenant, I find that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on December 6, 2010 by posting on the door. Documents delivered in this manner are deemed served 3 days later. The Tenant did not dispute service of the Notice.

The Notice informed the Tenant 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. I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to December 19, 2010.

There is no written tenancy agreement, but the Landlord testified and the Tenant agreed that the monthly rent is \$625.00. The Landlord testified that the Tenant made a partial payment of \$300.00 in December 2010 and no payment in January 2011. The Landlord testified that the Tenant's current unpaid rent is \$950.00.

The Tenant testified that he paid \$425.00 in December and no rent in January, but that he planned on moving from the rental unit.

Upon query, the parties admitted that the rent is paid in cash and there are no receipts issued.

## Analysis

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

I find the Tenant has not paid the outstanding rent owed to the Landlord and failed to apply to dispute the Notice, and therefore, is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, on December 19, 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.

As to the issue of unpaid rent, it is important to note that in a dispute such as this, the two parties and the testimony of each do not stand on equal ground. The reason that this is true is because one party must carry the added burden of proof. In other words, the applicant, in this case the landlord, has the onus of proving, during these proceedings, that the claim is justified. When the evidence consists of conflicting and disputed verbal testimony, then the party who bears the burden of proof will not likely prevail. For this reason, I accept the testimony of the Tenant over the Landlord as the Landlord could not provide proof of payments and find that the Tenant paid \$425.00 in December towards the rent.

Therefore I find that the Landlord has established a total monetary claim of **\$875.00** comprised of unpaid rent for December in the amount of \$200.00, January rent of \$625.00 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$300.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$575.00**.



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

## Conclusion

The Tenant failed to pay rent and did not apply to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and a monetary order for the balance due.

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 14, 2011.

---

Residential Tenancy Branch