



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes            OPR, MNR, MNDC, FF

### Introduction

This matter dealt with an application by the landlord for an Order of Possession for unpaid rent, for a Monetary Order to recover unpaid rent and to recover the filing fee for this application. The landlord withdrew his application for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement,

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to tenant on December 10, 2010. The tenant is deemed to have received the hearing documents on December 15, 2010 the fifth day after they were mailed in accordance with section 90(a) of the *Act*.

The landlords' agent and the tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

Both parties agree that this tenancy started on May 01, 2010. This is a fixed term tenancy which is due to expire on April 30, 2011. Rent for this unit is \$850.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$425.00 on May 01, 2010.



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The landlord testifies that the tenant did not pay her rent for December, 2010. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on December 02, 2010. This was left in a conspicuous place inside the tenants' door and was deemed to have been served three days later. This Notice states that the tenant owes rent for December, 2010 of \$850.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 12, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for January 2011 on the day it was due.

The landlord seeks to recover the sum of \$1,700.00 in unpaid rent, a \$25.00 late fee for Decembers rent and his \$50.00 filing fee paid for this application. The landlord also seeks an Order of Possession to take effect as soon as possible.

The tenant does not dispute that she owes rent to the landlord for December, 2010 and January, 2011. The tenant states she has not yet received her pay cheque from her employer but claims she sent the landlord a text message explaining this. The tenant states the landlord told her if she did pay the rent arrears then she would not be evicted ; however she states she did not pay it.

## Analysis

Section 26 of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement*. Both parties agree that rent is due on the first day of each month and the tenant agrees that she has not paid rent for December, 2010 or January, 2011. Consequently, I find that the landlord is entitled to recover rent arrears of **\$1,700.00** pursuant to s. 67 of the *Act*.

The landlord also seeks to recover \$25.00 in late fees for December, 2010. However, the landlord has not provided a copy of the tenancy agreement to show that the tenant is aware that this charge will be made if she is late with her rent. Therefore, this section of the landlords monetary claim is denied.



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I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was left at the tenants unit in a conspicuous place it was deemed served three days later and therefore the amended date of the Notice would be December 15, 2010 pursuant to s. 53 of the *Act*. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the landlord has been largely successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.

## Conclusion

I HEREBY FIND largely in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,750.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord 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: January 06, 2011.

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Residential Tenancy Branch