



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes            OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; they were sent to the tenant by registered mail on December 24, 2010. The tenant was deemed to be served the hearing documents on December 29, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

### Issues(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 outstanding rent?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

This month to month tenancy started over 10 years ago in 1999. Rent for this unit is \$1,345.00 per month and is due on the first of each month. The tenant paid a security deposit of \$675.00 on January 01, 1999.

The landlords' agent testifies that the tenant did not pay rent for October, November or December, 2010 to a sum of \$4,035.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on December 08, 2010. This was handed to the tenant in person on December 08, 2010. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 18, 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 to the amount of \$1,345.00. The landlords' agent has requested to amend the application to recover the unpaid rent for January of \$1,345.00 instead of considering it to be a loss of income as originally claimed. The total amount of unpaid rent is now \$5,380.00. The landlord has applied for the sum of \$5,000.00 only.

The landlord has applied to retain the tenants' security deposit of \$675.00 and any accrued interest in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

### Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for October, November, December, 2010 and January, 2011 to the sum of **\$5,000.00** as claimed pursuant to s. 67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$675.00 and accrued interest of \$75.77 in partial payment of the rent arrears.

As the landlord has been successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent as claimed	\$5,000.00
Less security deposit and accrued interest	(-\$750.77)
<b>Total amount due to the landlord</b>	<b>\$4,299.23</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. 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 effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

### Conclusion

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 **\$4,299.23**. 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 18, 2011.

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Residential Tenancy Branch