



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, 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, 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 23, 2010, The tenant was deemed to be served the hearing documents on December 28, 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 his 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 rent arrears?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

The landlords' agent testifies that this month to month tenancy started on July 01, 2009. Rent for this unit is \$1,200.00 per month and is due on the first of each month. The tenant paid a security deposit of \$600.00 on June 29, 2009.

The landlords' agent testifies that the tenant did not pay his rent for November and December, 2010 on the days it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on December 06, 2010. This was handed to the tenant in person on this date. The Notice states the tenant has five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 16, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has paid \$500.00 on December 20, 2010. The landlords' agent states this was accepted for use and occupancy only and left an outstanding balance of \$1,400.00. The tenant did not pay rent for January, 2011 on the day it was due but did pay \$1,900.00 on January 06, 2011. These payments were also accepted for use and occupancy only. The total amount of unpaid rent is now \$100.00.

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

The tenant does not dispute that he has been late with his rent and owes a sum of \$100.00 to the landlord. The tenant states he was not aware that he only had five days to pay the rent after receiving the 10 Day Notice. The tenant is aware the landlord is entitled to an Order of Possession but requests the landlord does not enforce this as he claims he will now be able to pay his rent each month.

### Analysis

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. The tenant did make payments towards the rent arrears on December 20, 2010 and January 06, 2011 and the landlord accepted these payments for use and occupancy only and did not reinstate the tenancy.

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*.

Section 26 of the *Act* states a tenant must pay rent on the day it is due under the tenancy agreement. I find the tenant has failed to do this on November and December, 2010 and was served with a 10 Day Notice to End Tenancy. At this time the amount of outstanding rent is **\$100.00** therefore the landlord is entitled to recover this sum from the tenant pursuant to section 67 of the *Act*.

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

#### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep **\$150.00** from the tenant's security deposit in satisfaction of the rent arrears and the remainder of the deposit of \$450.00 must either be returned to the tenant or dealt with in accordance with section 38 of the *Act*.

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.

---

Residential Tenancy Branch