



# Dispute Resolution Services

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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 for an Order of Possession, a Monetary Order to recover unpaid rent, an Order to keep all or part of the security deposit and to recover the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with s. 89 of the *Act*, and was given to the tenant in person on January 03, 2011. The landlord attending gave sworn testimony that service of these documents took place as declared.

One of the landlords appeared with a person acting as his support. Both persons gave affirmed testimony, were provided the opportunity to present their 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*.

All of the testimony and documentary evidence was carefully considered. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover the unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit and interest?

### Background and Evidence

This tenancy started on November 01, 2010. This is a month to month tenancy and rent is \$700.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$350.00 in November, 2010.

The landlord testifies that the tenant did not pay rent for December, 2010 of \$700.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on December 09, 2010. This was posted on the door of the tenants unit. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on December 19, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlords support person states she inadvertently put September as the month the rent was outstanding from but states the tenant did not reside at the rental unit in September so would understanding that this was an error on her part. Since The Notice was issued the tenant has not paid rent for January, 2011 to the sum of \$700.00.

The landlord seeks an Order of Possession to take effect as soon as possible.

The landlord seeks to keep the tenants security deposit of \$350.00 in partial payment towards the rent arrears and recover his filing fee.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

I accept an error was made on the 10 Day Notice however as the tenant would be aware he was not residing in the unit in September, 2010 and would be aware he had not paid his rent for December, 2010 I find this error does not invalidate the 10 Day Notice and the Notice remains in force and effect.

Section 26 of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.* The tenant has provided no evidence to show that he had a right to withhold his rent and consequently, I find that the landlord is entitled to recover rent arrears of **\$1,400.00** for December, 2010 and January, 2011 rent pursuant to s. 67 of the *Act*.

**I order** the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$350.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, he 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 for December, 2010 and January, 2011	\$1,400.00
Less security deposit and accrued interest	(-\$350.00)
<b>Total amount due to the landlord</b>	<b>\$1,100.00</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 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 s. 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As the Notice was posted to the door it was deemed served on December 12, 2010. Therefore the effective date of the Notice is amended to December 22, 2010 pursuant to section 53 of the *Act* and I grant the landlord an order of possession pursuant to section 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 **\$1,100.00**. The order must be served on the tenant 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 tenant 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 21, 2011.

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Residential Tenancy Branch