



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes – OPR, MNR, MNDC, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent.

The hearing was conducted via teleconference and was attended by the landlord only. The tenant did not attend.

The landlord testified that he served the tenant with notice of this hearing in person on January 18, 2011 at approximately 4:30 p.m. and that this service was witnessed by a third party.

Based on the landlord's testimony, I find that the tenant has been served with the notice of hearing documents sufficiently and in accordance with the *Residential Tenancy Act (Act)*.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

### Background and Evidence

The landlord testified the tenancy began in the summer of 2002 as a month to month tenancy for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month and that no security deposit was paid.

The landlord submitted into evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 10, 2011 with an effective vacancy date of January 21, 2011 due to \$2,000.00 in unpaid rent. The landlord states that he dated the Notice 10/11/2011 in error.

The landlord also submitted a tenant ledger that indicates the tenant failed to pay the full rent owed for the months of February, March, April, May, October, November, December 2010 and January and February 2011 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent personally on January 10, 2011.

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 apply to dispute the Notice to End Tenancy within five days.

The landlord also submitted a "promissory note" dated July 28, 2010 prepared by the tenant showing that she agrees that she owes the landlord \$3,200.00 and that she will pay him \$150.00 per month. The landlord testified that she provided two payments against this amount owing.

### Analysis

I have reviewed all testimony and evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on January 10, 2011 and the effective date of the notice is January 21, 2011. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

### Conclusion

I find that the landlord is entitled to an Order of Possession 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.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$8,000.00** comprised of \$7,900.00 rent owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: February 02, 2011.

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Residential Tenancy Branch