



# Dispute Resolution Services

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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 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. The landlord withdrew his application for a Monetary Order for money owed or compensation for damage or loss.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with s. 89 of the *Act*, sent via registered mail on January 29, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on February 03, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's 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*.

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 December 01, 2010. This is a fixed term tenancy which is due to expire on November 30, 2011. Rent is \$950.00 per month due on the 25th of each month. The tenant paid a security deposit of \$475.00 on December 01, 2010.

The landlords' agent testifies that the tenant did not pay rent owed for December, 2010 of \$950.00 and rent owed for January, 2011 of \$950.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 06, 2011 which stated the tenant owed rent of \$950.00 due on December 15, 2010. This was posted on the door of the tenants unit and sent to her by registered mail. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on January 15, 2011. 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 February, 2011 to the sum of \$950.00.

The landlord seeks an Order of Possession to take effect as soon as possible and a Monetary Order to recover the unpaid rent. The landlord seeks to keep the tenants security deposit of \$475.00 in partial satisfaction of the rent arrears and seeks to recover his filing fee of \$50.00.

### Analysis

The tenant did not appear at the hearing, despite having been sent 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 December, 2010, January, 2011 and February, 2011 to the sum of **\$2,850.00** pursuant to section 67 of the *Act*.

**I order** the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$475.00** 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, January and February, 2011	\$2,850.00
Less security deposit and accrued interest	(-\$475.00)
<b>Total amount due to the landlord</b>	<b>\$2,425.00</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 January 09, 2011 therefore the effective date of the Notice is amended to January 19, 2011 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 **\$2,425.00**. 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: February 10, 2011.

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Residential Tenancy Branch