



# 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 and utilities and for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), Regulations or tenancy agreement. The landlord also seeks 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*, sent via registered mail on February 25, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on March 02, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord 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 and utilities?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep all or part of the security deposit?

### Background and Evidence

This tenancy started on December 01, 2010. This is a fixed term tenancy for six months and rent is \$800.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$400.00 on December 01, 2010.

The landlord testifies that the tenant did not pay the balance of rent owed for January, 2011 of \$300.00 and did not pay the rent for February of \$800.00. The landlord issued two 10 Day Notices to End Tenancy for unpaid rent for each of the two months and these were served to the tenant in person on February 11, 2011. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on February 21, 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 March, 2011 and the landlord seeks to recover the rent arrears for these months of \$1,900.00.

The landlord has claimed unpaid utilities however after looking at the tenancy agreement again he sees that utilities are included in the rent and therefore he abandons this section of his claim.

The landlord seeks a loss of rental income as the tenancy will end before the end of the fixed term. The landlord seeks a loss of income for April and May, 2011 of \$1,600.00.

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

The landlord seeks to keep the tenants security deposit 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. S. 26 of the Act states a tenant must pay rent on the day it is due under the terms of the tenancy agreement. In this case the landlord has established that the tenant failed to pay the balance of

rent owed for January, 2011 and has not paid rent for February and March, 2011. Consequently it is my decision that the landlord is entitled to a Monetary Order of **\$1,900.00** to recover these sums from the tenant 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 **\$400.00** in partial payment of the rent arrears.

The landlord has abandoned his claim for unpaid utilities and this matter will not be dealt with at this hearing.

The landlord seeks to recover a loss of rental income for April and May, 2011 up to the end of the fixed term of the tenancy. However, as the landlord has not shown at this time how he has or will mitigate his loss in this matter I find this section of his application is premature and I dismiss this section with leave to reapply.

As the landlord has been partially 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 January, February and March, 2011	\$1,900.00
Less security deposit	(-\$400.00)
Total amount due to the landlord	\$1,550.00

I accept that the tenant was served the 10 Day Notices to End Tenancy for unpaid rent, pursuant to s. 88 of the *Residential Tenancy Act*. The Notices state that the tenant has 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 and I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,550.00**. 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: March 11, 2011.

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Residential Tenancy Branch