



# 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 seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally by the Resident Manager to the Tenant on March 22, 2011 at 12:20 p.m. at the rental unit. Based on the Resident Manager's testimony I find the Tenant was sufficiently served notice of today's hearing, in accordance with the *Act*.

The Landlord and Resident Manager appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant despite her being served notice of today's hearing in accordance with the *Act*.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord met the burden of proof to be entitled to obtain an Order of Possession and a Monetary Order as a result of that breach?

### Background and Evidence

The parties entered into this month to month tenancy agreement effective August 1, 2010. Rent was payable on the first of each month in the amount of \$928.00 and the Tenant paid \$447.50 security deposit on March 13, 2008.

The Landlord testified the Tenant had an accumulated balance of unpaid rent of \$1,628.80 which included a charge of \$404.80 to replace a blocked toilet. A 10 Day Notice to End Tenancy was issued March 3, 2011 and was personally served to the Tenant by the Resident Manager March 3, 2011.

The Landlord advised the Tenant is still occupying the unit and has not paid rent for April 2011. The Landlord is seeking the unpaid rent for April in addition to the previously mentioned amounts.

### Analysis

I have carefully considered the testimony and evidence provided by the Landlord which included, among other things, a copy of the tenancy agreement, a copy of the tenant payment ledger, and a copy of the 10 Day Notice.

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

**Order of Possession.** I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act* and the Tenants failed to pay the rent in full within 5 days after receiving this notice. In the absence of an application to dispute the Notice, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, March 13, 2011, and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Therefore I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent.** The Landlord claims for unpaid rent for March and April 2011 however this tenancy ended on the effective date of the 10 Day Notice to End Tenancy which was, March 13, 2011, pursuant to section 44(1)(a)(ii) of the *Act*.

Section 26 of the *Act* provides that a tenant must pay rent when it is due in accordance with the *Act*. In this case the Tenant was required to pay the accumulated unpaid rent of **\$1,224.00** (\$1,628.88 – 404.80 toilet repair costs), which was due and payable prior to the issuance of the 10 Day Notice.

The remainder of the Landlord's claim is for loss of rent, as the tenancy has ended on the effective date of the Notice and the Tenant continues to occupy or over hold the rental unit which prevents the Landlord from re-renting the unit at this time. Therefore I approve the Landlord's request of **\$928.00** for loss of rent for April 2011, pursuant to section 67 of the *Act*.

**Damages \$404.80** – The Landlord has sought \$404.80 for costs related to replacing or repairing a broken toilet. There is no evidence before me to support the toilet in this unit required repair or replacement, due to a breach of the *Act* on the part of the Tenant, and there is no evidence before me to support the work has been completed at a cost of \$404.80. Therefore I find the Landlord provided insufficient evidence to support his claim and I dismiss his request of \$404.80 without leave to reapply.

**Filing Fee \$50.00.** The Landlord has primarily been successful with their application therefore I award the \$50.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Accumulated unpaid rent up to March 2, 2011	\$1,224.00
Loss of rent for April 2011	928.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$2,202.00</b>
Less Security Deposit of \$447.50 plus interest of \$5.39	-452.89
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,749.11</b>

#### Conclusion

I HEREBY 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 Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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 **\$1,749.11**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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: April 12, 2011.

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Residential Tenancy Branch