



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, OPC, MNR, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Despite having been personally served with the application for dispute resolution and notice of hearing on March 18, the tenant did not participate in the conference call hearing.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

### Background and Evidence

The landlord's undisputed testimony is as follows. The rental unit was rented for some years by J.S., who served as the landlord's resident manager. The tenant occupied the unit during this time but at no time paid rent to the landlord. J.S. passed away in December 2010 and the tenant continued to occupy the rental unit.

The landlord offered to enter into a tenancy agreement with the tenant at a rate of \$1,000.00 per month and drew up a tenancy agreement which he gave to the tenant to sign. The tenant did not sign the agreement.

The landlord asked the tenant to pay an outstanding balance owed to the landlord by J.S. and offered to only charge \$400.00 in rent for the month of January in recognition of the tenant's relationship with J.S. and the long service J.S. had provided to the landlord. J.S.'s balance and \$400.00 in rent for January was paid by a relative of J.S.

The landlord's staff raised \$400.00 to assist the tenant with rent for February and paid this sum on his behalf. The tenant paid \$320.00 to the landlord for rent in February but has paid no rent since that time.

The tenant has access to a telephone account which is billed to the landlord and there was an understanding between the parties that the tenant would be responsible for any long distance charges. At the time the landlord made the application for dispute resolution, the tenant had accumulated \$43.01 in long distance charges.

On March 8 the landlord personally served the tenant with a 10 day notice to end tenancy.

The landlord seeks an order of possession and a monetary order for unpaid rent for March, loss of income for April, the cost of long distance phone charges and recovery of the filing fee paid to bring his application.

### Analysis

It is clear on the facts and I find that the tenant was not a party to the rental agreement between J.S. and the landlord. Ordinarily, the landlord would take action against the estate of J.S. in order to remove a party who occupied the rental unit under J.S.'s tenancy. However, in this case I find that because the tenant paid rent to the landlord in February, the tenant established a tenancy relationship with the landlord and the landlord may therefore act directly against the tenant.

The difficulty in this case is that the parties do not appear to have come to an agreement as to the rental rate. The landlord attempted to impose a \$1,000.00 per month rental rate on the tenant, but there is no evidence that the tenant agreed to that amount.

I find that the tenant was aware that the landlord's staff had donated \$400.00 on his behalf for rent for February and because he paid a further \$320.00, I find it more likely than not that he understood that the rent was at least \$720.00 per month.

I find that the tenant paid no rent whatsoever in the month of March and I find that he was served with a 10 day notice to end tenancy on March 8. The tenant did not pay any rent in March and did not apply for dispute resolution to dispute the notice and I find that pursuant to section 46(5), he is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. I grant the landlord an order of possession. The tenant must be served with the order and should he fail to comply with the order, the landlord may enforce it through the Supreme Court.

I find that the tenant was obligated to pay \$720.00 per month in rent and that he failed to make that payment in the month of March. I award the landlord \$720.00 in rental arrears for March. I find that the landlord has been unable to re-rent the unit while the

tenant was still residing therein and I find that the tenant must be held responsible for \$720.00 in lost income for that month. I award the landlord a further \$720.00.

I find that the tenant failed to pay \$43.01 in long distance phone charges and I award the landlord \$43.01. I find that the landlord should recover the filing fee and I award him \$50.00.

I grant the landlord a monetary order under section 67 for \$1,533.01. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and a monetary order for \$1,533.01.

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 11, 2011

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Residential Tenancy Branch