



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent, for unpaid rent and utilities, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Tenant testified he was in receipt of the Landlord's Notice of Dispute Resolution hearing documents and evidence.

### Issues(s) to be Decided

1. Is the Landlord entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?
2. Has the Landlord met the burden of proof to obtain a Monetary Order due to the Tenant's breach of the *Residential Tenancy Act*?

### Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy agreement that began on February 1, 2011. Rent is payable on the first of each month in the amount of \$435.00 plus \$30.00 per month for utilities. The Tenant paid \$217.50 on January 31, 2011 as the security deposit.

The Landlords testified that the Tenant failed to pay the June 1, 2011 rent and utilities and was issued a 10 Day Notice to End Tenancy on June 9, 2011 was personally served to him. The Tenant has now failed to pay the July 1, 2011 rent which they wish to have added to their claim. They are seeking an Order of Possession for as soon as possible.

The Tenant confirmed receipt of the 10 Day Notice dated June 9, 2011 and advised that he had been issued a Notice previous to this that he had applied to have cancelled. He confirmed he did not serve the notice of hearing documents to the Landlords for his hearing and he did not apply to cancel the June 9, 2011 Notice. He alleged that he paid his June rent on May 24, 2011 by depositing money into the Landlord's account; however he did not submit evidence to support this testimony.

### Analysis

All of the testimony and documentary evidence was carefully considered.

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 Landlord 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*, that the Tenant failed to pay the rent or apply to dispute the Notice within 5 days after receiving this Notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice 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 of \$435.00 per month for June 2011 and July 2011 plus \$30.00 for June 2011 utilities for a total amount of \$900.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent and utilities are due monthly on the first of each month. After reviewing the evidence I find the Landlord has proven his claim for damage or loss, as listed above, in the amount of **\$900.00**.

**Filing Fee \$50.00.** The Landlord has succeeded with his claim and I hereby award recovery of the filing fee from the Tenant.

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

Unpaid Rent for June 1, 2011 and July 1, 2011 (2 x \$435.00)	\$870.00
Unpaid Utilities for June 1, 2011	30.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the Landlord)	<b>\$950.00</b>
Less Security Deposit of \$217.50 plus interest of \$0.00	-217.50
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$732.50</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 is legally binding and must be served upon the Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$732.50**. The Order is legally binding and must be served on the Respondent Tenant.

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: July 11, 2011.

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Residential Tenancy Branch