



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent, authorization to retain the security deposit and pet deposit, and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of revenue?
3. Is the landlord authorized to retain the security deposit?
4. Can the parties reach a mutual agreement to resolve this dispute?

### Background and Evidence

The tenancy commenced January 18, 2011 and the tenant paid a \$362.50 security deposit and a \$200.00 pet deposit. The tenancy agreement provides that the tenant will pay rent of \$725.00 on the 1<sup>st</sup> day of every month; however, as a rental incentive the tenant's rent is discounted to \$665.00 per month. The tenancy agreement also provides for late fees of \$25.00 per occurrence.

I heard testimony that the tenant did not pay rent for June 2011 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door on June 6, 2011. I also heard that the tenant was in the hospital until mid-June 2011 and suffered loss of employment. The tenant continues to reside in the rental unit and has not paid any monies to the landlord for June or July 2011. Nor did the tenant dispute the Notice.

The parties were able to reach a mutual agreement during the hearing that I record as follows:

1. The tenant will pay the landlord the unpaid rent for June and July 2011 as well as rent for August 2011; late fees for June and July; and the cost of the filing fee (a total of \$2,095) within two days of the date of this hearing.
2. If the tenant fulfills term no. 1 the landlord will issue a receipt to the tenant, reinstate the tenancy, and the Orders that accompany this decision will be void and of no effect.
3. If the tenant fails to fulfill term no. 1 the landlord may serve the tenant with the Order of Possession and Monetary Order that accompany this decision and enforce those orders as necessary.

### Analysis

When a tenant is served with a 10 Day Notice, the tenant has five days to dispute the Notice or pay the outstanding rent. Under section 46 of the Act, if the tenant does not pay the rent or dispute the Notice the tenant is conclusively presumed to have accepted that the tenancy shall end on the effective date of the Notice.

When a Notice is posted on the door it is deemed served three days later under section 90 of the Act. In this case, I find the tenant was deemed to be served with the 10 Day Notice on June 9, 2011 even though he may not have received it until mid-June. Accordingly, he had until June 14, 2011 to pay the outstanding rent to nullify the Notice or dispute the Notice.

Upon consideration of all of the evidence before me, I find the landlord is entitled to an Order of Possession for unpaid rent. I find the landlord entitled to recover the unpaid rent and loss of rent; late fees and the filing fee in the amount of \$2,095.00 from the tenant. I find the landlord authorized to retain the security deposit and pet deposit in partial satisfaction of the unpaid rent for June 2011.

In light of the above, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant and a Monetary Order in the amount of \$541.55 (\$2,095.00 less the \$362.50 security deposit and \$200.00 pet deposit). However, in recognition of the mutual agreement reached between the parties, I further order that the landlord may only serve and enforce the Orders if the tenant fails to pay the landlord \$2,095.00 within two days of the date of this hearing. Accordingly, if the tenant pays the landlord \$2,095.00 within two days of the date of this hearing the Orders are void and unenforceable.

Conclusion

This dispute has been resolved by mutual agreement. The landlord has been provided a conditional Order of Possession and Monetary Order in the event the tenant fails to fulfill his obligation under the mutual agreement recorded in this decision.

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 27, 2011.

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Residential Tenancy Branch