



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order for unpaid rent and late fees and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

### Issue(s) to be Decided

Has the tenant breached the Residential Tenancy Act (the “Act”) or tenancy agreement, entitling the landlord to an Order of Possession and monetary relief?

### Background and Evidence

This one year fixed term tenancy began on October 1, 2010, monthly rent is \$1,350.00, and the tenant paid a security deposit of \$620.00 on or before October 1, 2010. The tenancy ended on July 1, 2011, when the tenant vacated the rental unit.

The landlord gave affirmed testimony and supplied evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) on June 15, 2011, by posting on the door. The Notice stated the amount of unpaid rent as of June 1, 2011 was \$1,400.00. The effective vacancy date was June 25, 2011.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord’s total monetary claim is \$2,800.00, which includes unpaid rent of \$1,350.00 for June and July, 2011, each, and for late bank fees for each month.

During the course of the hearing the parties acknowledged that the tenant had vacated the rental unit and that the landlord no longer requested an order of possession.

The landlord testified that the tenants have not paid the monthly rent of \$1,350.00 for June and the tenant acknowledged that June rent remained unpaid.

The landlord stated that the tenant owed \$50.00 for NSF charges, but acknowledged that she never deposited the rent cheques and therefore they were never returned. Additionally, the tenancy agreement did not provide for a charge of late fees.

The landlord testified that she immediately began advertising the rental unit as soon as she knew the tenant was vacating, but was unsuccessful in obtaining a new tenant before August 1, 2011. The landlord explained it was difficult finding a new tenant during the last week in June for the first of July.

The tenant testified that she had employment difficulties and did want to pay the rent, but was unable to. The tenant stated she had discussed these matters with the landlord.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations, the landlord in this case, has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the tenant has not paid the outstanding rent owed to the landlord and failed to apply to dispute the Notice, and therefore, is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord has established a total monetary claim of **\$2,750.00** comprised of unpaid rent of \$2,700.00 for June and July, and the \$50.00 fee paid by the landlord for this application.

I **dismiss** the landlord's claim for \$100.00, as the landlord has not established an incurred loss for NSF charges.

I grant the landlord a monetary order under section 67 of the Act in the amount of \$2,750.00.

I am enclosing a monetary order for \$2,750.00 with the landlord's Decision. This order is a **legally binding, final order**, and may be filed in the Provincial Court (Small Claims) should the tenant fail to comply with this monetary order.

#### Conclusion

The landlord is granted a monetary order for \$2,750.00.

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 22, 2011.

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Residential Tenancy Branch