



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. The hearing was conducted via teleconference and was attended by the landlord only. The tenants did not attend.

The landlord submitted confirmation that on August 10, 2011 the landlord served the tenants with the Notice of Hearing documents via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that the tenants have been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

The landlord testified at the outset of the hearing that the tenant had moved out sometime last week, he believes it was Wednesday, September 7, 2011. As such, the landlord no longer needs an order of possession and I amend his application to exclude the matter of possession.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on August 21, 2009 for a month to month tenancy beginning on September 1, 2009 for the monthly rent of \$1,050.00 due on the 1<sup>st</sup> of each month and a security deposit of \$525 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on August 2, 2011 with an effective vacancy date of August 12, 2011 due to \$780.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenants failed to pay the full rent owed for the months of August and September 2011 and that the tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent personally on August 2, 2011 at 4:30 p.m. and that this service was acknowledged when the tenant signed a proof of service document.

The Notice states the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on August 2, 2011 and the effective date of the notice was August 12, 2011. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46(4) of the *Act*.

Based on the foregoing, I find the tenants are conclusively presumed under Section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,880.00** comprised of \$1,830.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$525.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,355.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced 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: September 12, 2011.

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Residential Tenancy Branch