



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNSD, FF (MNR)

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

The landlord served the tenants with the application and Notice of hearing by posting them to the tenants door on August 13, 2011. Section 89(1) of the *Act* states when a landlord is applying for a Monetary Order he must either serve the tenant in person or by registered mail. A landlord is entitled to serve a tenant by posting the hearing documents to the door when the landlord is applying for an Order of Possession pursuant to s. 89(2) of the *Act*. Consequently, I am only prepared at this hearing to hear the landlords' application for an Order of Possession as the tenant is not deemed to have been served correctly for any Monetary Claims.

The landlords' agents appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession due to unpaid rent?

### Background and Evidence

The landlords' agents testify that this month to month tenancy started on July 01, 2010. The tenants rent for this unit is \$950.00 per month plus 25 percent of utilities. Rent is due on the 1<sup>st</sup> day of each month in advance. The tenants paid a security deposit of \$475.00 on June 17, 2010.

The landlords' agent testifies that the tenants have failed to pay rent and utilities for August, 2011 and a 10 Day Notice to End Tenancy was served to the tenants on August 02, 2011. This notice was posted to the tenant's door and notified the tenants that they had five days to pay the outstanding rent and utilities or apply to dispute the Notice or the tenancy would end on August 12, 2011. Since that time the tenants have not disputed the notice or paid the outstanding rent and utilities. The tenants have also failed to pay rent for September, 2011. The landlords' agents testify that the tenants now have rent arrears of \$1,900.00 and arrears of utilities totalling \$127.95. The landlords' agents seek an Order of Possession.

The landlords have also applied to recover their \$50.00 filing fee for this proceeding.

### Analysis

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that 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 outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that 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 and grant the landlord an order of possession.

As the landlord has been successful with this application for an Order of Possession I find the landlord is also entitled to recover the \$50.00 filing fee. I order that the landlord retain this amount from the security deposit of \$475.00 leaving a balance \$425.00.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

The landlord's application for a Monetary Order and an Order to keep the security deposit are dismissed with leave to reapply.

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 15, 2011.

---

Residential Tenancy Branch