



# Dispute Resolution Services

Page: 1

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 to obtain an Order of Possession for unpaid rent and to obtain a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. Is so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

### Background and Evidence

The Tenant's witness provided affirmed testimony that she knows the Tenant is behind in his rent and that she gave him \$900.00 to give to the Landlord on approximately November 15, 2011.

The parties entered into a fixed term tenancy agreement that began on January 1, 2011, even though the Tenant occupied the unit as of December 15, 2010. The tenancy agreement is set to switch to a month to month tenancy after June 1, 2012. Rent is payable on the first of each month in the amount of \$2,300.00. The Tenant paid the security deposit of \$1,150.00 sometime during the first week of January 2011, after the first payment was returned insufficient funds.

The Landlord testified that when the Tenant failed to pay his October 1, 2011 rent a 10 Day Notice to End Tenancy was posted to his door on October 10, 2011. Rent is currently outstanding for October and November 2011 for a total amount due of

\$3,700.00 (2 x \$2,300.00 - \$900.00 payment). The Landlord is seeking the Order of Possession and a Monetary Order for unpaid rent for both months.

The Tenant confirmed he is still occupying the rental unit and his accumulated rental arrears are \$3,700.00.

### Analysis

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 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 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 accumulated unpaid rent of \$3,700.00, 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 is due monthly on the first day of each month. As per the aforementioned I find the Landlord has met the burden of proof and I approve her request for a Monetary Order for **\$3,700.00**.

The Landlord has succeeded with her claim; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

### 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 Respondent Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$3,750.00** (\$3,700.00 + \$50.00). This Order is legally binding and must be served upon 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: November 14, 2011.

---

Residential Tenancy Branch