



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, to keep the security deposit in partial satisfaction of their claim, and to recover the cost of the filing fee from the Tenant.

The parties appeared, 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 and or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The parties entered into a tenancy that began on November 1, 2007. Subsidized rent is payable on the first of each month in the amount of \$551.00 and on October 15, 2007 the Tenant paid \$300.00 as the security deposit which was based on market value rent.

The parties agreed that when the Tenant failed to pay the full amount of the October 1, 2011 rent a 10 Day Notice to End Tenancy was posted to the Tenant's door on October 5, 2011 at 7:10 p.m.

The Landlord requests an Order of Possession and a Monetary Order for the unpaid rent for October and November 2011 of 1,100.00 (\$550.00x 2) which the Tenant agreed to.

### 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*. Accordingly, I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$550.00 for October 2011, plus \$550.00 for November 2011, 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 of each month. Therefore I award the Landlord **\$1,100.00** for unpaid rent.

**Filing Fee** - The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

### Conclusion

I HEREBY FIND 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 Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,150.00**. This Order is legally binding and must be served upon the 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 18, 2011.

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Residential Tenancy Branch