



# 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 by the Landlord for an order of possession, a monetary order for unpaid rent, to recover the filing fee, and an order to keep all or part of the security deposit.

SM, agent for the Landlord provided affirmed testimony that he personally served the Tenant with the Notice of hearing and Application for Dispute Resolution at 3:00 P.M. on November 16, 2011. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter(s)

The Landlord indicated several matters of dispute on his application. The Landlord stated that they have a written tenancy agreement with the Tenant, however this was not provided as evidence in advance of the hearing. The Landlord also stated that they have a detailed accounting showing the amounts owed to them by the Tenant and showing that the Tenant has been in arrears for several months, and has been consistently late in paying the rent. The Landlord has not provided a copy of their accounting details to show how much the Tenant is in arrears for and how much for late fees. The Notice to End Tenancy document issued to the Tenant by the Landlord states on the top of the document that as of October 01, 2011 that the Tenant owes the Landlord \$1587.00 plus \$50.00 late fee. The Landlord states that he would like to amend his Application as the Tenant now owes rent for November 2011. The Landlord also states that the Tenant has some payments since receiving the Notice, but the Landlord states he has provided receipts to the Tenant that state for use and occupancy only.

I find that the Landlord has failed to provide me with sufficient evidence to properly account for his monetary claim. It is not clear how much of the Landlord's claim is for late fees and how much is for rent. The Landlord stated that he has a number of documents in his possession which he did not submit into evidence. I find that the Landlord has failed to provide me a detailed accounting of the amounts owed by the Tenant, to demonstrate how he has reached the total amount contained on the Notice to End tenancy, and his request to amend the amount. I also find that the Landlord has failed to provide me a copy of the written tenancy agreement between the parties, which may identify what late fees have been agreed to by the parties under the tenancy agreement. The Landlord has also neglected to provide me a copy of any evidence to support that the monthly rent has increased from \$850.00 to \$903.00 in accordance with the Act. As a result I dismiss the monetary portions of the Landlord's claim with leave to reapply.

Therefore, I will deal only with the Landlord's request for an order of possession.

#### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession?

#### Background and Evidence

The Landlord states that he has a written tenancy agreement with the Tenant which commenced on January 01, 2008. The Landlord testified that tenancy agreement says that the rent is \$850.00 per month, but has increased and the rent is currently \$903.00 per month, due on the first of the month. The Landlord confirmed that he holds a security deposit of \$425.00 which the Tenant paid when he moved into the rental unit. The Landlord did not provide a copy of tenancy agreement in advance of the hearing.

The Landlord stated that the Tenant has been late with rent constantly and that he wants the Tenant to start paying the rent in full when it is due on the first of the month. SM, agent for the Landlord stated that that he served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent in person on October 04, 2011 in the late afternoon. The Landlord provided a copy of the 10 Day Notice to End Tenancy which states that as of October 01, 2011 the Tenant was in arrears for \$1587.00 plus \$50.00 late fee. The Landlord states that that the Tenant has made some payments towards the balance owed, after receiving the Notice but has not paid in full and now November's rent has come due as well. The Landlord states that the Tenant paid only \$250.00 towards the

rent arrears within five days of receiving the Notice. As the Tenant failed to pay the full amount of rent arrears as stated on the Notice, the Landlord states that he has written for use and occupancy only on the receipts given to the Tenant. The Landlord states that the Tenant also accumulated further rent arrears for November 2011. As a result the Landlord applied for dispute resolution after the Tenant continued to be in arrears in November 2011.

The Notice to End Tenancy issued by the Landlord on October 04, 2011 informed the Tenant that the Notice would be cancelled if the outstanding rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. The Notice stated that the Tenant had until October 14, 2011 to move out of the rental unit. The Tenant is still in the rental unit and has not moved out, is still in rent arrears and has not filed an application for dispute resolution.

The Landlord is seeking an order of possession plus the filing fee for this Application.

### Analysis

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

The evidence of the Landlord confirmed that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on October 04, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was personally delivered to the Tenant, it was deemed to have been served on October 04, 2011 (the same day). The Notice states that the Tenant had five days to pay the full amount of the outstanding rent or the tenancy would end from the service date. The Tenant did not pay the outstanding rent within five days from the date of service. The deadline to do so was October 09, 2011. The Landlord correctly indicated that the Tenant had until October 14, 2011 to vacate the premises, as this is ten days from the deemed service date, pursuant to the provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days of service of the Notice and the Tenant did not move out.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on October 14, 2011, which is ten days after the effective date of the Notice. Therefore, I find that the Landlord is

entitled to an order of possession for the rental unit effective two days from the date of service of the order on the Tenant.

As the Landlord has only partially succeeded in their Application, I find that the Landlord is not entitled to recover the filing fee for this proceeding.

### Conclusion

The Landlord's other disputes, unpaid rent and request to keep the security deposit, as set out on their Application are dismissed with liberty to reapply.

I find that the Landlord is entitled to an order of possession not later than **two (2) days after service** of this order on the Tenant. This order must be served on the Tenant and may be filed in Supreme Court.

The order accompanies the Landlord's copy of this decision.

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 29, 2011.

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Residential Tenancy Branch