



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNSD, OPR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that the Tenant vacated the rental unit on November 1, 2011, and therefore, it is not necessary to deal 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 monetary relief?

### Background and Evidence

Based on the evidence of the Landlord, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent, in person, on October 2, 2011.

The Landlord claims the Tenant has not paid all the outstanding rent and claims \$50.00 in rent for July, \$1,100.00 in rent for September, \$550.00 in rent for October and \$1,100.00 in rent for November, all in 2011.

The Tenant vacated the rental unit on November 1, 2011. The Tenant did not file an Application to dispute the Notice to End Tenancy.

The Tenant claimed the Landlord is lying. The Tenant claims he has receipts to prove he has paid all the rent due, however, the Tenant did not provide these in evidence for the hearing. The Tenant claims that the rental unit ceiling caved in, that there was a fire in the rental unit, and that there were bed bugs in the rental unit.

### Analysis

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

Although the Landlord is entitled to an order of possession in these circumstances, the Tenant vacated the rental unit and therefore, an order of possession is no longer required.

The Tenant alleges he has documents which show the rent has been paid, but he did not submit these in evidence for the hearing. The Tenant acknowledged receipt of the Landlord's Application, the Notice of Hearing and the hearing package documents. It is set out in these documents that the Tenant had, that a party to a hearing must provide their evidence five business days before the hearing. The Tenant did not submit any of these alleged documents, and I do not find they are admissible after the hearing.

Therefore, I accept the evidence of the Landlord and I find that the Tenant has failed to pay rent under the Act and tenancy agreement. In addition to the rent in arrears, I allow the Landlord one day of rent for the Tenant overholding in November.

Therefore, I find the Landlord has established a total monetary claim of **\$1,790.00** comprised of the balance of rent owed for July of \$50.00, September rent of \$1,100.00, October rent of \$550.00, \$40.00 in rent for overholding into November, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$550.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,240.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Lastly, I note that at the end of the hearing the Tenant became rude and argumentative, and then hung up before the hearing had concluded.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy, and vacated the rental unit. Therefore, an Order of Possession is not required.

The Landlord is granted a monetary order for rent due, may keep the security deposit in partial satisfaction of the award, has an order for the balance due and has leave to apply for further monetary compensation.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 15, 2011.

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Residential Tenancy Branch