



# 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 for an order of possession, a monetary order for unpaid rent and the filing fee, and an order to retain the security deposit in partial satisfaction of the claim.

The Landlord provided affirmed testimony that he served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on December 01, 2011, and provided the receipt and tracking slip from Canada Post as evidence. 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.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and a monetary order for unpaid rent and recovery of the filing fee?

### Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy agreement states that the tenancy commenced on August 01, 2009, and rent is due on the first day of the month. The Landlord provided a copy of a rent increase to the rental unit effective May 01, 2011 which shows the current rent is \$630.00. The Landlord stated that the Tenant paid the Landlord a security deposit of \$300.00 at the commencement of the tenancy. The addendum to the tenancy agreement was also provided by the Landlord and this document is signed by the Tenant, and it states that there is a late fee of \$25.00 for rent that is not paid by the first of the month.

The Landlord testified that the Tenant failed to pay November's rent when it was due, so they served the Tenant with the 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the door of the rental unit at 10:00 A.M. on November 02, 2011. The Landlord provided a signed proof of service document from the manager and witness who posted the Notice on the Tenant's door.

The Landlord stated that the Tenant paid \$300.00 towards the outstanding rent on November 8<sup>th</sup>. The Landlord stated that the Tenant did not pay the remainder of the rent for November 2011 and did not move out within ten days of being served with the Notice. The Landlord filed an Application for Dispute Resolution on November 30, 2011.

The Landlord testified that the Tenant is still in the rental unit at the time of this hearing. The Landlord states they have been trying to speak with the Tenant but they are not responding. The Landlord is requesting an order of possession.

The Landlord also requests a monetary order for \$330.00 for outstanding rent for November and the \$25.00 late fee for the rent for November as required by the tenancy agreement. The Landlord has applied to keep all or part of the security deposit (\$300.00) towards the unpaid rent.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

### Analysis

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

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on November 02, 2011 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was posted on the door of the rental unit on November 02, 2011, it was deemed to have been served on the Tenant within three days. The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not pay the outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was November 10, 2011. The Landlord indicated on the Notice that the Tenant had until November 12, 2011 to vacate the premises, however as the Notice was posted, this corrects to November 15, 2011, based on the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days and the Tenant did not file an Application to dispute the Notice.

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 November 15, 2011, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement submitted into evidence by the Landlord states that rent is due on the first of the month. I find that the Tenant failed to pay the full amount of rent for November and did not vacate the rental unit within 10 days of service of the Notice. As a result, I find that the Landlord has established a monetary claim of \$355.00, comprised of the balance of rent owing for November (\$330.00) and the late fee for November 2011 (\$25.00).

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$405.00.

I order that the Landlord retain the security deposit (\$300.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$105.00**.

#### Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$105.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The orders accompany 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: December 14, 2011.

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Residential Tenancy Branch