



# 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 was scheduled to deal with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The landlord and the male tenant appeared at the hearing. Both parties were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

In filing this application the landlord named two tenants. I heard that the hearing documents were served upon the male tenant only. Pursuant to section 89(2) of the Act a landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at the tenant's residence with an adult who apparently resides with the tenant. I find that by serving the male tenant with the hearing documents, both tenants have been sufficiently served with the portion of the Application for Dispute Resolution relating to an Order of Possession.

The landlord has applied for a Monetary Order which requires that the landlord serve each respondent as set out under section 89(1). In this case only one of the two tenants has been served with the Application for Dispute Resolution. Therefore, I find that the request for a Monetary Order against both tenants must be amended to name only the tenant who has been properly served with the Application.

The landlord requested that the Application be amended to include retention of the security deposit in partial satisfaction of the rent owed. As I found this request non-prejudicial to the tenants I granted this request for amendment.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced April 1, 2011 and the tenants paid a \$1,000.00 security deposit. The tenants are required to pay rent of \$2,000.00 on the 1<sup>st</sup> day of every month. Shortly after the tenancy commenced the tenants began falling behind in their rent payments. On October 24, 2011 the landlord personally served the male tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates \$3,900.00 in rent was outstanding as of October 1, 2011 and has a stated effective date of November 5, 2011. The tenants did not pay the outstanding rent or dispute the Notice. The tenants did not pay any monies for November or December rent and continue to occupy the rental unit.

The landlord is seeking a monetary award of \$7,900.00 including unpaid rent and loss of rent up to and including the month of December 2011.

The tenant agreed to the facts and amounts presented by the landlord. The tenant explained that he and his family are in financial crisis for various reasons.

The tenant acknowledged that he and his spouse were tenants but the tenant suggested that there are other co-tenants that the landlord did not name in this Application. The landlord was of the position that the tenant and his spouse were the tenants and that other occupants lived in the rental unit with the tenants.

Provided as documentary evidence were copies of the 10 Day Notice and a ledger showing an accounting of the rental arrears.

### Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the tenants did not pay the outstanding rent or dispute the Notice I find the tenancy ended on November 5, 2011 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

Upon consideration of all of the evidence before me, I find the landlord entitled to recover unpaid rent and loss of rent in the amount of \$7,900.00 for the months up to and including December 2011. I further award the landlord the \$100.00 filing fee paid for this application for a total award of \$8,000.00. I authorize the landlord to retain the tenants' \$1,000.00 security deposit in partial satisfaction of the rent owed the landlord and provide the landlord with a Monetary Order in the net amount of \$7,000.00 to serve upon the male tenant. The Monetary Order may be enforced in Provincial Court (Small Claims) as an order of that court.

With respect to the issue raised by the tenant about the obligations of other tenants or occupants to pay the outstanding rent I provide the parties with the following information. "Occupants" are not party to a tenancy agreement with the landlord and do not have an obligation to pay rent to the landlord; nor, can a landlord pursue an occupant for unpaid rent. "Co-tenants" are multiple tenants under a single tenancy agreement and are jointly and severally liable for obligations and debts that arise from the tenancy agreement. A landlord may pursue all or one of the co-tenants for the amounts owed to the landlord. It is upon the co-tenants to apportion the debt among themselves. Whether the other people living in the rental unit were occupants or co-tenants is of no consequence as I am satisfied the landlord has pursued one of the tenants and is entitled to recover the unpaid rent from that tenant.

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is authorized to retain the tenants' security deposit and is provided a Monetary Order for the balance of \$7,000.00 to serve 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: December 08, 2011.

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Residential Tenancy Branch