



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof the hearing documents were sent to the tenant on December 12, 2011. The landlord testified that the registered mail was sent to the rental unit and the tenant continues to occupy the unit.

Having been satisfied the tenant has been sufficiently notified of the hearing and the landlord's application I proceeded to hear from the landlord without the tenant present.

During the hearing the landlord requested the application be amended to correct a mathematical error and reduce the monetary claim. The landlord also requested the application be amended to authorize the landlord to retain the security deposit in partial satisfaction of the outstanding rent. The landlord's requests for amendment were accepted as I found them to be non-prejudicial to the tenant.

### 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 or loss of rent?
3. Is the landlord authorized to retain the security deposit in partial satisfaction of the rent owed to the landlord?

### Background and Evidence

The tenancy commenced August 29, 2011 and the tenant was required to pay rent of \$950.00 on the 1<sup>st</sup> day of every month for a fixed term set to expire September 1, 2012. The tenant paid rent of \$950.00 for September 2011 and a security deposit of \$475.00. The landlord testified that the tenant paid \$700.00 of the rent owed for October 2011 on October 7, 2011. The tenant did not pay rent for November when due and the landlord

issued the tenant a 10 Day Notice to End Tenancy for Unpaid Rent and personally served it upon the tenant on November 2, 2011.

The tenant signed a Proof of Service document acknowledging receipt of the 10 Day Notice on November 2, 2011. The Notice indicates \$950.00 was outstanding as of November 1, 2011. On November 14, 2011 the tenant deposited into the landlord's bank account an \$800.00 cheque written on the account of a third party. The cheque was returned on November 17, 2011 with the explanation there was "stop payment" on the cheque. The tenant deposited \$400.00 into the landlord's account November 17, 2011. No monies have been received since then and the tenant continues to occupy the rental unit.

Although the landlord requested compensation of \$2,450.00 on the application, the landlord acknowledged a mathematical error was made. The landlord reduced the claim to \$1,750.00 which is the sum of the unpaid rent for October and November 2011 and loss of rent for December 2011.

### 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 tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on November 12, 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 tenant.

I find the landlord entitled to recover unpaid rent for the months of October 2011 and November 2011 and since the tenant did not return vacant possession to the landlord when required I also grant the landlord's request to recover loss of rent for the month of December 2011. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

October 2011 unpaid rent	\$ 250.00
November 2011 unpaid rent	550.00
December 2011 loss of rent	950.00
Filing fee	50.00
Less: security deposit	<u>(475.00)</u>
Monetary Order	\$ 1,325.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the security deposit and is provided a monetary Order for the balance of \$1,325.00 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 22, 2011.

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Residential Tenancy Branch