



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

This tenancy started on August 15, 2011. Rent for this unit is \$875.00 per month. Rent is due on the first day of each month. The tenant paid a security deposit of \$437.50 on August 13, 2011.

The landlord testifies that the tenant failed to pay rent for November, 2011. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 02, 2011. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice stated that the tenant owed rent of \$875.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 14, 2011. The tenant did not pay the outstanding rent until December 01, 2011 and this was accepted by the landlord for use and occupancy only. Since that time the tenant paid rent for December, 2011 by cheque which was also accepted for use and occupancy only.

The landlord states they reached an agreement with the tenant that if all the rent was paid the landlord would reinstate the tenancy. During the hearing the tenant informed the landlord that the rent cheque provided by the tenant for Decembers rent would not be cleared at the bank (NSF) as he had to use the funds for his cancer medication.

The landlord states that in light of this they will continue to request an Order of Possession for December 23, 2011. However the landlord states if the tenant pays the outstanding rent and NSF fee by December 23, 2011 the landlord will not enforce the Order of Possession.

The landlord has applied to retain the tenants' security deposit of \$437.50 in partial payment towards the rent arrears and will apply this if the tenant fails to pay the rent. The landlord has also applied to recover the \$50.00 filing fee paid for this application.

The tenant does not dispute that he owes rent for December, 2011 and agrees to pay this rent to the landlord by December 23, 2011.

### Analysis

I find the tenant failed to pay rent for December, 2011. When the tenant did pay the outstanding rent specified on the 10 Day Notice for November the landlord accepted the rent for use and occupancy only and did not reinstate the tenancy. Therefore the landlord is entitled to recover the sum of **\$875.00** for December, 2011 pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$437.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$875.00
Less Security Deposit	(-\$437.50)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$487.50</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 the effective date of the Notice and grant the landlord an order of possession as requested during the hearing for December 23, 2011.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$487.50**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **December 23, 2011**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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 12, 2011.

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Residential Tenancy Branch