



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent. The landlord had originally made this application through the Direct Request Proceeding and a decision and Orders were rendered at that Proceeding. The tenants applied for a review of the decision and Orders alleging fraud and the Dispute Resolution Officer deemed that a new hearing must take place between the parties by conference call.

The Parties were served new Notices of Hearing for this date by the Residential Tenancy Branch. The landlords appeared at the hearing however the tenants failed to appear.

The landlord appeared with his nominated agent and witnesses' although only one witness was called to give evidence. The parties attending gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

The landlord testifies that this tenancy started on October 01, 2011. This was a fixed term tenancy for one year and was due to expire on September 30, 2012. Rent for this unit is \$900.00 per month and is due on the first day of each month in advance.

The landlord testifies that the tenants failed to pay rent for November on the day it was due. A 10 Day Notice to End Tenancy was served upon the tenants on November 07, 2011. This notice had an effective date of November 17, 2011 and stated that the tenants owe rent of \$900.00 for November, 2011. The landlord testifies that the tenants were served with this two page 10 Day Notice on November 07, 2011 in person by the landlord and his wife who was a witness. The landlord submitted a proof of service for this document. This proof of service declares that the male tenant (ODK) was served in person on November 07, 2011 at 10.00 p.m.

The landlords witness testifies that she was present when the 10 Day Notice was served to the tenants in person and it was not posted on the tenants' door as they have stated in their review application. The landlords witness testifies that the male tenant (ODK) was served and the other tenant was sitting on the sofa in the rental unit and observed the male tenant being served with the Notice.

The landlord's agent testifies that the tenants were therefore served on November 07, 2011 and did not file an application to dispute the Notice and did not pay the outstanding rent within the five days allowed on page two of the Notice. The landlord seeks an Order of Possession. The landlord's agent testifies that the tenants did pay \$800.00 of the outstanding rent on November 15, 2011 and the balance of \$100.00 on

November 24, 2011. The landlord states the tenants were informed that the tenancy would not be renewed.

The landlord states the tenants failed to pay the rent for December, 2011 and as they would be aware that rent was due on the first day of each month the landlord seeks to recover the sum of \$900.00.

### Analysis

I have reviewed the tenants application for a review of the original decision that the decision and orders were obtained due to fraudulent information being provided by the landlord at the Direct Request Proceeding. The tenants' application for review was upheld and a new hearing was scheduled for today. The tenants were sent Notice of this hearing by the Residential Tenancy Branch but the tenants have failed to appear at the hearing to give sworn testimony that the 10 Day Notice to End Tenancy was posted to the door of their unit.

The landlord did however provide both a proof of service document and the person who witnessed the male tenant being served with the 10 Day Notice on November 07, 2011. Consequently I find the tenants were served with the 10 Day Notice in person on November 07, 2011.

The tenants therefore had five days to either pay the outstanding rent of \$900.00 or dispute the 10 Day Notice. The tenants failed to do either of these things and I find therefore, pursuant to s. 46(5) of the Act, that the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I further find that although the tenants paid rent after the five allowable days for November they failed to pay rent for December. Therefore as the tenants have continued to reside in the rental unit they would have been aware that rent was due on

December 01, 2011 and I grant the landlord a Monetary Order to recover December, 2011 rent of \$900.00 pursuant to s. 67 of the Act.

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 **\$900.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenants. This order must be served on the Respondents 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 28, 2011.

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Residential Tenancy Branch