



# 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 to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of pet and or security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession, pursuant to sections 55 of the *Residential Tenancy Act*?
3. Does the Landlord's claim for unpaid rent fall under the jurisdiction of the *Residential Tenancy Act*?

### Background and Evidence

The parties confirmed they first entered into a tenancy agreement on November 30, 2005 and then entered into subsequent extensions to the tenancy. The current monthly rent is payable on the first of each month in the amount of \$1,750.00. The Tenant was supposed to pay a security deposit and a pet deposit however he only paid \$775.00 on October 24, 2005 as the security deposit.

The Landlord affirmed the rental arrears are currently \$66,000.00 and that he was told to change his application to claim \$25,000.00 and decide later if he wished to recover the balance through Supreme Court. When asked what the \$25,000.00 claim relates to the Landlord advised it is rental arrears.

A discussion took place whereby the Landlord said he had an understanding with the Tenant that he could continue to reside in the rental unit without paying rent until the Tenant's business proposition came to fruition; at which time the Tenant would pay the Landlord the rental arrears. The Landlord said this agreement was verbal to a point and then back in August 2010 he served the Tenant a 10 Day Notice for \$39,000.00 in unpaid rent but did not take action at that time.

The Tenant confirmed he owes the Landlord over three years of rent and unfortunately when the markets took a downturn in September 2008 his business took a hit as well.

The Landlord is seeking an Order of Possession effective two day upon service to the Tenant, and the monetary order.

### Analysis

I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is 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 pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

In response to the Landlord's claim for a monetary order, I have carefully considered the evidence before me which included, among other things, testimony from both parties and a copy of a 10 Day Notice to End Tenancy which indicates the rental areas are in excess of \$65,250.00. The Landlord made application for a monetary order in the amount of \$66,000.00 and then changed the application to read a claim of \$25,000.00 without further explanation of the amount being claimed other than it was for rental arrears.

Section 59 (2)(b) of the *Act* provides that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

Based on the aforementioned, and in accordance with section 62(2), I find that the Landlord's claim pertains to monetary compensation for unpaid rent in the amount of \$66,000.00. Accordingly, I dismiss the monetary application, pursuant to section 58(2) of the *Act*, for want of jurisdiction, as this claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*.

The Landlord has only been partially successful with his application; therefore I award partial recovery of the filing fee in the amount of **\$50.00**.

Any deposits currently held in trust by the Landlords are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord may deduct the one time award of **\$50.00** from the Tenant's security deposit.

The Landlord's monetary claim is hereby dismissed for want of jurisdiction.

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 13, 2011.

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Residential Tenancy Branch