



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC 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, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail December 3, 2011. Mail receipt numbers were provided in the Landlord's evidence. Based on the written submission of the Landlord I accept that the Tenant has been served notice of this proceeding in accordance with the Act.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present his 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 and a Monetary Order as a result of that breach, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord affirmed the parties entered into a written fixed term tenancy agreement that began on July 1, 2011 and was set to switch to a month to month tenancy after June 30, 2012. Rent is payable on the first of each month in the amount of \$2,600.00 and on June 30, 2011 the Tenant paid \$1,300.00 as the security deposit and \$1,300.00 as the pet deposit.

The Landlord stated the October 1, 2011, November 1, 2011 and now December 1, 2011 post dated rent payments have all been returned by the bank. A 2 page 10 Day Notice to End Tenancy was posted to the Tenant's door on November 23, 2011 as supported by the Landlord's evidence.

The Landlord stated that when the October 1, 2011 cheque was returned the Tenant paid him \$1,300.00 cash; however no other payments have been made towards rent leaving an accumulated balance due of \$6,500.00. The Landlord is seeking an Order of Possession for as soon as possible.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

**Order of Possession** - 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.

**Claim for unpaid rent** - The Landlord claims for the total unpaid rent of \$6,500.00 which consist of \$1,300.00 owed for October 2011 plus \$2,600.00 for November 2011 plus \$2,600.00 for December 2011; pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due.

Based on the aforementioned I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I award the Landlord **\$6,500.00** for unpaid rent.

The Landlord has succeeded with her application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent for October, Nov & Dec 2011	\$6,500.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$6,550.00</b>
<b>LESS:</b> Security Deposit \$1,300.00 and Pet Deposit of \$1,300.00 + Interest 0.00	<u>-2,600.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$3,950.00</u></b>

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.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$3,950.00**. This Order is legally binding and must be served 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 15, 2011.

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Residential Tenancy Branch