



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPB MND MNR MNDC FF

### Preliminary Issues

At the outset of the hearing a review was conducted of the Landlord's application at which time she advised she wished to withdraw her request for an Order of Possession for breach of agreement and proceed with her request for an Order of Possession for unpaid rent. She also wished to withdraw her request for damages to the unit, site or property with leave to reapply.

### 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, 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 8, 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 Landlords 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 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 Landlords affirmed that they entered into a written fixed term tenancy agreement that began on October 1, 2009 and switched to a month to month tenancy agreement after January 1, 2010. Rent is payable on the first of each month in the amount of \$550.00 and on September 13, 2011, the Tenant paid \$300.00 as the security deposit.

The Landlord advised that when the Tenant failed to pay November 1, 2011 rent of \$550.00 a 10 Day Notice to End Tenancy was issued and personally served to the Tenant on November 30, 2011, in the presence of a witness. The Tenant has failed to pay the November 2011 rent and now has failed to pay the December 2011 rent. They are seeking an Order of Possession for as soon as possible and the Monetary Order for all the unpaid rent.

### 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 \$1,100 which consist of \$550.00 owed for November 2011 plus \$550.00 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 **\$1,100.00** for unpaid rent.

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

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 **\$1,150.00** (\$1,100.00 + \$50.00). 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 23, 2011.

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Residential Tenancy Branch