



# 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 was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent and utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; and to recover the filing fee from the tenant for the cost of 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 on December 21, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, 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 and utilities?

Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

The landlord testifies that this month to month tenancy started on November 01, 2003. Rent for this unit is now \$935.00 and is due on the first day of each month in advance. The tenant paid a security deposit of \$450.00 on October 31, 2003.

The landlord testifies that the tenant owed an amount of rent from 2009 of \$1,790.00. The tenant owed an amount of rent from 2010 of \$1,670.00 and the tenant owed an amount of rent from 2011 of \$3,740.00. The landlord testifies that he served the tenant with a 10 Day Notice to End Tenancy by registered mail on December 07, 2011. This Notice states the tenant owes an amount of rent of \$7,200.00 and utilities of \$438.85. The 10 Day Notice has an effective date of December 22, 2011.

The landlord testifies that the tenant paid the sum of \$1,870.00 on December 19, 2011 and a portion of the unpaid utilities. The landlord testifies the tenant now owes a few hundred dollars for utilities but he is more concerned about the unpaid rent. The landlord agrees he did not inform the tenant that he was accepting this outstanding rent for use and occupancy only and it did not reinstate the tenancy.

The landlord testifies the tenant now owes \$1,870.00 in unpaid rent to the end of December, 2011 and the tenant has failed to pay rent for January, 2012. The landlord testifies that he informed the tenant she was still responsible for unpaid rent for 2011 but the landlord would forgive any rent arrears for 2009 and 2010.

The landlord has applied to keep the tenants security deposit to offset against the unpaid rent. The landlord also seeks an Order of Possession and to recover the \$50.00 filing fee.

### Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

*Section 26 of the Act states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The landlord has provided documentary evidence showing the outstanding rent and the accumulative rent unpaid since 2009. The landlord has forgiven unpaid rent for 2009 and 2010. Consequently, I find the landlord is entitled to a Monetary Order to recover the balance of unpaid rent for 2011 to the sum of **\$1,870.00**. The landlord has not disclosed the amount of outstanding utilities at the hearing and I therefore give the landlord leave to reapply for unpaid rent for January and unpaid utilities in the event the tenant does not pay these in accordance to s. 26 of the Act.

With regards to the landlords claim for an Order of Possession; when a landlord accepts all or part of the rent arrears or any other rent after a 10 Day Notice to End Tenancy is issued the landlord should advise the tenant in writing that the payment is being accepted for use and occupancy only and does not reinstate the tenancy; and the landlord must tell the tenant of one of the options: that the tenant must vacate in accordance with the Notice to End Tenancy, or the tenant must vacate at the end of the month. As the landlord did not advise the tenant of these things the landlord has in

effect reinstated the tenancy. Consequently, the landlords application for an Order of Possession is dismissed.

The landlord is at liberty to serve the tenant with a new 10 Day Notice to End Tenancy for unpaid rent for January 2012.

As the tenancy will continue at this time I am unable to deal with the landlord's application to keep the security deposit. A security deposit is held in trust by the landlord until the tenancy ends and must then be dealt with in accordance to s. 38 of the *Act*. The landlord is at liberty to file a new application to keep the security deposit at the end of the tenancy or if the landlord files a new application to recover unpaid rent for January, 2012.

As the landlord has been partially successful with his claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the balance of unpaid rent for 2011 and the filing fee to a total sum of **\$1,920.00**.

### Conclusion

I HEREBY FIND in favor of the landlord's reduced monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,920.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: January 09, 2012.

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Residential Tenancy Branch