



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### 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; for a Monetary Order for unpaid rent; 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 22, 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 landlords agent and witness appeared, gave sworn testimony, were provided the opportunity to present 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?

### Background and Evidence

This tenancy started on June 01, 2010. This started as a fixed term tenancy which has reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$1,075.00 per month and is due on the first day of each month in advance.

The landlord's agent testifies that the tenant failed to pay rent for December, 2011 of \$1,075.00. The landlord issued a 10 Day Notice to the tenant on December 07, 2011. This Notice states the tenant owes rent of \$1,100.00 which includes a late fee of \$25.00. The Notice states the tenant has five days to either pay the rent or dispute the Notice or the tenancy will end on December 17, 2011.

The landlord's agent states the tenant has not paid the outstanding rent and the landlord seeks an Order of Possession to take effect as soon as possible and a Monetary Order to recover the unpaid rent and late fee.

The landlord witness gave testimony concerning the service of the 10 Day Notice to the tenant and states she witnessed the landlords agent post this 10 Day Notice to End Tenancy on the tenant's door at 4.00 p.m. on December 07, 2011

### Analysis

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 established that rent is due on the first day of each month and the tenant failed to pay rent for December, 2011. Consequently, I find that the landlord is entitled to recover rent arrears of **\$1,075.00** pursuant to s. 67 of the *Act*.

The landlord also seeks to recover \$25.00 in late fees for December, 2010. The landlord has provided a copy of the tenancy agreement which includes a clause concerning the late fees of \$25.00 will be charged for each month the tenant pays rent late.

Consequently, I find the tenant was aware that late fees would be applied if the tenant failed to pay rent on the day it was due and find the landlord has established his claim to recover the sum of **\$25.00** pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted to the tenant's door on December 07, 2011 it was deemed served three days later on December 10, 2011. Therefore I have amended the date of the Notice to December 20, 2011 pursuant to s. 53 of the *Act*. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the landlord has been successful with this 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 following amount:

Unpaid rent	\$1,075.00
Filing fee	\$50.00
Total amount due to the landlord	\$1,150.00

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,150.00**. The order must be served on the Respondent 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 tenant. This order must be served on the Respondent 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: January 10, 2012.

---

Residential Tenancy Branch