



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, 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 an Order of Possession because the tenants breached an agreement with the landlord; for a Monetary Order for unpaid rent or 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 tenants for the cost of this application.

During the hearing the landlord's agent withdrew their application with the exception of their request for an Order of Possession for unpaid rent.

One of the tenants, the landlords agent and landlord witness attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witness on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

### Background and Evidence

Both parties agree that this month to month tenancy started on May 01, 2008. The tenants pay a monthly rent of \$350.00 which is due on the first day of each month in advance.

The landlord's agent testifies that the tenants did not pay rent for December, 2011 on the day it was due. The landlord's agent served the tenants with a 10 Day Notice to End Tenancy on December 06, 2011 which was received by the tenants on December 07, 2011. This Notice informed the tenants that they had five days to pay the outstanding rent, or dispute the Notice or the tenancy would end on December 16, 2011.

The landlord's agent testifies that the female tenant came to the office to pay \$150.00 towards the rent arrears and this was accepted for use and occupancy only and marked as such on the receipt. The landlord's witness who accepted this rent payment gave testimony to that affect. The tenants were also charged \$25.00 as their pre-authorised rent payment for Decembers rent was uncleared at the bank and the tenancy agreement allows the landlords to charge the tenants a sum of \$25.00.

The landlord's agent testifies that between Christmas and New Year the male tenant came to the office to pay the reminder of the rent. The landlords agent testifies she discussed with the tenant that the tenants could keep the balance of rent to pay a security deposit for any new accommodation as the landlords were going to proceed with having the 10 Day Notice upheld. The landlords agent testifies that the male tenant thanked her and said he was looking forward to moving. The landlords witness gives the same testimony of these events as the witness states she was present at that time.

The tenant agrees that they did not pay rent on December 01, 2011 and states when she went to pay the \$150.00 to the landlord she tried to explain their situation to the landlord and told them that her husband would come and pay the rest of the rent. The tenant testifies she told the landlord's agent that her car was broken into outside their

church and their rent money had been stolen. The tenant agrees the receipt given to her for the \$150.00 she paid on December 07, 2011 was marked for use and occupancy only. The tenant acknowledges that she did receive the 10 Day Notice to End Tenancy on December 07, 2011.

The landlord testifies that the tenant told the landlord the same story about her missing rent in the summer when the tenants were unable to pay their rent for August, 2011.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness.

*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.*

If a tenant fails to pay the rent owed or fails to file an application to dispute the 10 Day Notice within five days of receiving the Notice the tenants are conclusively presumed to have accepted the end of the tenancy and must move from the rental unit by the effective date of the Notice. The landlord has only provided page one of the 10 Day Notice in evidence however the tenant acknowledged that she did receive the 10 Day Notice on December 07, 2011. I accept that the tenants did pay part of the rent arrears on December 07, 2011 after receiving the 10 Day Notice; however, as the tenants did not pay all the outstanding rent the \$150.00 this was accepted by the landlord for use and occupancy only and did not reinstate the tenancy.

Consequently it is my decision that due to the unpaid rent for December, 2011 the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service** on the tenants. This order must be served on the Respondents 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 17, 2012.

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Residential Tenancy Branch