



# Dispute Resolution Services

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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 landlords' 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 landlords to the tenant, was done in accordance with section 89 of the *Act*, and was given in person to the tenant on October 11, 2011.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally and in written form, documentary form, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

This month to month tenancy started on August 12, 2011. Rent for this unit is \$550.00 per month and is due on the first of each month.

The landlord attending testifies that the tenant owed a balance of rent from August, 2011 of \$175.00. The tenant paid \$400.00 in rent for September, 2011 leaving an outstanding balance of \$150.00. The tenant failed to pay rent for October, 2011 on the day it was due. The total amount of outstanding rent is \$875.00. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on October 02, 2011. This was handed to the tenant in person. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 12, 2011. The landlord testifies she made an error on the 10 Day Notice and put \$825.00 outstanding rent when it is in fact \$875.00. The landlord testifies that the tenant did not pay the outstanding rent or dispute the Notice within five days.

The landlord testifies that the tenant has not moved out as per the effective date of the Notice and has failed to pay any rent for November, 2011. The landlord seeks to recover Novembers rent to the sum of \$550.00.

The landlord seeks a Monetary Order to recover the outstanding rent and filing fee paid for this proceeding and seeks an Order of Possession to take effect as soon as possible.

The tenant agrees he had rent arrears for August and September, 2011 and agrees he did not pay his rent on October 01, 2011. The tenant testifies that he tried to pay \$600.00 to the landlord on October 23, 2011 but the landlords refused to accept this. The tenant states he should not be responsible for Novembers rent if he has to move from the rental unit.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the Parties to Section 26 of the *Act* which 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 tenant does not dispute that he owes rent of \$175.00 for August and \$150.00 for September. The tenant does not dispute that he did not pay his rent on October 01, 2011 and does not dispute that he did not pay the outstanding rent of **\$875.00** within five days of receiving the 10 Day Notice.

When a 10 day Notice is served to a tenant if they do not pay the rent or dispute the Notice within five days of receiving the Notice they are conclusively presumed to accept the end of the tenancy and must move out on the effective date of the Notice. In this case the effective date was October 12, 2011. Consequently the landlord has established their claim for an Order of Possession pursuant to s. 55 of the *Act*.

It is my decision that the landlord is entitled to a monetary award for unpaid rent for August, September and October, 2011 of \$875.00. I further find the tenant has failed to pay rent for November, 2011 and has continued to reside at the rental unit after the effective date of the 10 Day Notice. However, as the landlords will receive an Order of Possession for two days after service upon the tenant the landlords must show how they have mitigated their loss of rent for the remainder of November by taking appropriate steps to re-rent the unit. In light of this I limit the landlords claim for unpaid rent for November, 2011 to half a month's rent of **\$275.00**. The landlord is at liberty to file a new application for a loss of rental income if the unit remains unrented after November 15, 2011.

As the landlords have been partially successful with their claim I find they are also entitled to recover the **\$50.00** filing fee paid for this proceeding pursuant to s. 72(1) of the *Act*. The landlord will receive a Monetary Order for the following amount:

Total amount of rent arrears	\$1,150.00
Filing fee	\$50.00
Total amount due to the landlord	\$1,200.00

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,200.00**. 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 landlords 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: November 03, 2011.

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Residential Tenancy Branch