



# 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 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*. The first application for an Order of Possession was posted to the tenant's door the second amended application and Notice was given to the tenant in person on November 06, 2011.

The landlord appeared, gave testimony, was 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.

### Issues(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

The landlord states this month to month tenancy started on August 01, 2011. Rent for this unit is \$750.00 per month and is due on the first of each month.

The landlord states the tenant failed to pay the rent for October, 2011 on the day it was due. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on October 17, 2011. This was posted to the tenant's door and was deemed to have been served three days after posting on October 20, 2011. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 27, 2011. The tenant also failed to pay rent for November on the day it was due but did pay \$1,500.00 on November 11, 2011. The landlord states the tenants receipt for this payment was marked for use and occupancy only and the 10 Day Notice remains in effect.

The landlord seeks an Order of Possession to take effect on November 30, 2011 and seeks to recover his \$50.00 filing fee. As the outstanding rent has now been paid the landlord no longer requires a Monetary Order to recover the outstanding rent.

#### Analysis

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy 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 on the tenants' door on October 17, 2011 it was deemed served on October 20, 2011 and therefore the amended date of the Notice would be October 30, 2011 pursuant to s. 53 of the *Act*. The tenant did not pay the outstanding rent within five days nor did the tenant apply to dispute the Notice to End Tenancy within five days.

The tenant did pay all the outstanding rent on November 11, 2011 however as this was paid past the five allowable days after being served with the 10 Day Notice the landlord accepted this payment for use and occupancy only and informed the tenant on the receipt that the 10 Day Notice remains in effect.

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 effective date of the Notice and grant the landlord an Order of Possession.

As the landlord has been successful in this matter, the landlord is entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's claim for the filing fee. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. 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 **on November 30, 2011**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

As the outstanding rent has now been paid this section of the landlords claim is dismissed.

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 17, 2011.

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Residential Tenancy Branch