



# 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 response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on November 9, 2011, the tenant did not attend.

All evidence and testimony provided have 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 or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

### Background and Evidence

The landlord testified that this tenancy began on May 19, 2011. Rent in the amount of \$650.00 per month is payable in advance on the 15<sup>th</sup> day of each month according to the tenancy agreement, a copy of which was provided in advance of the hearing. On July 7, 2011 the landlord collected a security deposit from the tenant in the amount of \$300.00.

The landlord also testified that the tenant failed to pay rent when it was due for the month of October, 2011. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which was provided in advance of the hearing, by posting it to the door of the rental unit on October 17, 2011. The notice is dated October 17, 2011 and contains an expected date of vacancy of October 27, 2011. The tenant did not move out of the rental unit in accordance with the notice to end the tenancy, but left the landlord a note stating that the tenant would be moving out. The landlord further testified that the tenant's belongings are still in the rental unit, however the landlord is not certain whether or not the tenant has entirely moved out. The tenant did not pay any rent for the month of November, 2011, nor has the landlord received any rent since September, 2011. The landlord applies for an Order of Possession and a monetary order for unpaid rent in the amount of \$1,300.00 and recovery of the \$50.00 filing fee for the cost of this application.

### Analysis

The landlord was provided with an opportunity to fax a copy of the Canada Post receipt and registration as evidence of having served the tenant by registered mail. The date on the receipt is cut off of the fax copy, however, the registered mail ticket contains a post office stamp indicating that the package was sent on November 9, 2011.

Section 59 of the *Residential Tenancy Act* states that an application for dispute resolution must be in the applicable approved form, include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and be accompanied by the fee prescribed in the regulations. A person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

The landlord did not apply for an order specifying a different period to serve the tenant, and the application was filed by the landlord on November 3, 2011. Therefore, according to the Act, the landlord must have served the tenant by November 6, 2011, and I must find that the landlord has not complied with Section 59 of the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed. The landlord is at liberty to reapply for an order, but the landlord must comply with the Act by serving the tenant with notice of the application and the hearing within 3 days of making the application.

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: December 2, 2011.

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Residential Tenancy Branch