



# 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 dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent, recovery of the filing fee, and an order to keep the security deposit.

The Landlord testified that he served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on January 13, 2012, and provided the tracking information from the Canada Post receipt. I find that the Tenant was served the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (the "Act").

The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter(s)

The Landlord's Application requests that the rent for February 2012 be included in his monetary claim. The Landlord stated that although the rent is due on the first of the month, he does not believe the Tenant will pay the rent for February. As the hearing was held the same date as the day the rent is due, I find that the Landlord is premature in claiming the rent for February as the Tenant has until the end of the day on February 01, 2012 to pay the rent for February.

As a result, the Landlord's claim for rent or rental income loss for February 2012 is dismissed with liberty to reapply.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and a monetary order for unpaid rent, recovery of the filing fee and an order to keep the security deposit?

### Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy commenced on September 10, 2010, and rent is due on the first day of the month in the amount of \$950.00. The Tenant paid the Landlord a security deposit of \$475.00. The tenancy agreement states that \$25.00 is owing to the Landlord for late rent payment of rent. The Landlord stated that the Tenant is currently in the rental unit and has not moved out at this time.

The Landlord provided affirmed testimony that the Ten Day Notice to End Tenancy for Unpaid Rent was personally served on the Tenant at the rental unit on December 21, 2011. The Landlord provided a copy of the proof of service in evidence with the Tenant's signature confirming that the Tenant received this on December 21, 2011. The Landlord stated that he was accompanied by a witness when he served the Notice. The Landlord testified that he provided the Tenant with both pages of the Notice. This Notice informed the Tenant that the Notice would be cancelled if the outstanding rent was paid within five days. This Notice also explains the Tenant had five days to dispute the Notice. This Notice advised the Tenant that he must vacate the rental unit on January 01, 2012. The Landlord testified that the Tenant paid \$225.00 for December 01, 2011 and \$475.00 on December 29, 2011, but that a balance of \$250.00 was still outstanding for December 2011. The Tenant did not move out or file an Application for dispute resolution. The Tenant also failed to pay any rent for January 2012.

The Landlord filed an Application for Dispute Resolution on January 12, 2012. The Landlord sent the Tenant the Application, evidence, and Notice of Hearing package by Registered Mail.

The Landlord requests an order for \$1,200.00 (\$250.00 outstanding rent for December 2011 plus \$950.00 rent for January 2012), plus a \$25.00 late fee for the rent for January which has not been paid. The Landlord is also requesting an order of possession of the rental unit. The Landlord has applied to keep the security deposit towards the unpaid rent.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding. The Landlord's total monetary claim is \$1,275.00.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant was properly served in person on December 21, 2011 with the 10 Day Notice to End Tenancy for Unpaid Rent in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

I have reviewed all documentary evidence and considered the Landlord's testimony and I accept the evidence and testimony that the Tenant has failed to pay the rent owed within the 5 days pursuant to section 46(4) of the *Act*, and that he is still in the rental unit as of the date of this hearing.

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 January 01, 2012, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

I find that the Tenant is aware that he is in arrears for the rent for December 2011 in the amount of \$250.00 and in arrears for \$950.00 for January 2012. I also find that the \$25.00 late fee claimed by the Landlord for January 2012 is allowed by the tenancy agreement and the *Act*. As a result, I find that the Landlord has established a monetary claim of \$1,225.00.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the total amount of the monetary order to \$1,275.00.

I order that the Landlord retain the security deposit (\$475.00), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$800.00**.

### Conclusion

The Landlord's claim for rent or rental income loss for February 2012 is dismissed with liberty to reapply

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant.

I find that the Landlord may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$800.00**.

The orders accompany the Landlord's copy of this decision. The orders must be served on the Tenant and may be filed in the Supreme 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: February 01, 2012.

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Residential Tenancy Branch