



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPB, MNR, MNDC, 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, damage or loss under the Act, regulation, or tenancy agreement, and recovery of the filing fee.

The Landlord testified that they served the Tenant, by registered mail with the Application for Dispute Resolution and Notice of Hearing on January 24, 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 stated that they are also requesting rental income loss for future months up to the end of the fixed term tenancy agreement, August 31, 2012, as well as, any advertising costs and cleaning costs incurred in relation to the rental unit.

The Landlord stated that at the time they made the Application the Tenant was in rent arrears and had not moved out, but that as of January 31, 2012 the Tenant did move most of her belongings out of the rental unit except for some furniture. The Landlord stated that they are in the process of cleaning the rental unit and advertising, however, the Tenant has not yet removed some of her furniture at this time and has told them that her boyfriend will come and get it. It is reasonable for the Landlord to claim rental income loss for February 2012. However, I find that the Landlord is premature in claiming the rental income loss for March 2012 and any future months.

As a result, the Landlord's claim for rent or rental income loss for March 2012 and any future months is dismissed with liberty to reapply. As the Landlord has not calculated

their advertising costs and cleaning costs at this time, these costs are also 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, damage or loss under the Act, regulation, or tenancy agreement, and recovery of the filing fee?

### Background and Evidence

The signed tenancy agreement between the parties was submitted in the evidence by the Landlord. The tenancy commenced on December 01, 2011, and rent is due on the first day of the month in the amount of \$1,000.00. The Tenant did not pay the Landlord a security deposit or pet damage deposit. The tenancy agreement states that it is a fixed term tenancy until August 31, 2012.

The Landlord provided affirmed testimony that although they had initially requested rent on the first of each month, they had allowed the Tenant to make rent payments of \$500.00 on the first and the fifteenth of the month to total the \$1,000.00 per month. The Landlord stated that the Tenant only paid \$500.00 rent for January 2012, and that the cheque for January 15, 2012 did not clear. The Landlord stated that the Ten Day Notice to End Tenancy for Unpaid Rent was personally served on the Tenant at the rental unit on January 18, 2012. The Landlord provided a copy of the Notice and the proof of service in evidence that the service was witnessed on January 18, 2012. The Landlord stated that the Tenant told them she had put a stop payment on the rent cheque for January 15, 2012, but no further explanation was given. The Ten Day 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 she must vacate the rental unit on January 27, 2012. As the rent was not paid in five days, the Landlord filed an Application for Dispute Resolution on January 24, 2012. The Landlord sent the Tenant the Application, evidence, and Notice of Hearing package by Registered Mail.

The Landlord stated that the Tenant moved most of her belongings out of the rental unit on January 31, 2012, but has left some furniture behind and stated that she would like her boyfriend to pick up the furniture later. The Landlord stated that they were unable to find new tenants for the rental unit for February 01, 2012 as they did not know when the Tenant was going to move out and they had not received an order of possession for the

rental unit yet. As a result, the Landlord is claiming rental income loss for February 2012.

The Landlord requests an order for \$1,500.00 (\$500.00 outstanding rent for January 2012 and \$1,000.00 rental income loss for February 2012). The Landlord is also requesting an order of possession of the rental unit.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding. The Landlord's total monetary claim is \$1,550.00.

### 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 January 18, 2012 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*. The Tenant also did not apply for dispute resolution within 5 days of being personally served with the Notice.

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 28, 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 she is in arrears for the rent for January 2012 in the amount of \$500.00 and is aware of the rental income loss incurred by the Landlord for February 2012. As a result, I find that the Landlord has established a monetary claim of \$1,500.00.

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 \$1,550.00.

I grant the Landlord an order under section 67 for **\$1,550.00**.

Conclusion

The Landlord's claim for rental income loss for March 2012 and any future months is dismissed with liberty to reapply. The Landlord's claim for advertising costs and cleaning costs is also 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 grant the Landlord a monetary order for **\$1,550.00**, which represents the balance of unpaid rent for January 2012 (\$500.00), rental income loss for February 2012 (\$1,000.00), and the filing fee (\$50.00).

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 13, 2012.

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Residential Tenancy Branch