



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This matter was originally conducted by way of Direct Request proceeding. The Dispute Resolution Officer who conducted the Direct Request proceeding determined that it was appropriate for the matter to be conducted by way of teleconference hearing. I was assigned and conducted a teleconference hearing on this application.

This hearing dealt with an application by the landlord for an order of possession pursuant to a notice to end tenancy for unpaid rent issued January 19, 2012, as well as a monetary order for unpaid rent. The landlord, an agent for the landlord and one tenant participated in the teleconference hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession?  
Is the landlord entitled to a monetary order?

### Background and Evidence

The tenancy began on March 1, 2008. Rent in the amount of \$1100 is payable in advance on the first day of each month. The tenant failed to pay rent in the months of December 2011 and January 2012, and on January 19, 2012 the landlord served the tenants with a notice to end tenancy for non-payment of rent. The notice indicated that the tenant owed \$1650 in unpaid rent. The landlord testified that the amount of unpaid rent indicated on the notice comprised unpaid rent of \$1100 for December 2011 and January 2012 as well as \$50 for two late payment fees, less a \$600 credit for overpayment of rent for six months in 2011.

The tenant further failed to pay rent in the month of February 2012. The landlord has claimed \$3300 in unpaid rent for December 2011 through February 2012, as well as \$75 for three late payment fees of \$25 each.

The tenant acknowledged that he has not paid rent of \$1100 for each of the months of December 2011, January 2012 and February 2012.

### Analysis

I find that the notice to end tenancy is not valid. In a 10 Day Notice to End Tenancy for Unpaid Rent, a landlord may not claim any fees or amounts greater than the rent owed, aside from utilities, which are dealt with separately. If the landlord claims an amount greater than the rent owed, the notice will be invalid. In this case, the landlord included late fees in the amount claimed for unpaid rent.

As for the monetary order, I find that the landlord has established a claim for \$3375 in unpaid rent and late fees.

### Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

I grant the landlord an order under section 67 for the balance due of \$3375. This order may be filed in the Small Claims 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: February 20, 2012.

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Residential Tenancy Branch