



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF (MNDC)

### Introduction

This hearing was convened by way of conference call in response to the landlords' 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. The landlords have also applied to recover unpaid Strata fines from the tenant and although they have not filed an application for this under a Monetary Order for money owed or compensation for damage or loss as they have included evidence pertaining to this matter I have allowed the landlords to amend their claim to deal with this issue as the tenant would be aware from the landlords evidence that this monetary award was being sought.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 15, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords appeared, gave sworn testimony, were 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.

### Preliminary Issues

The landlords have also applied to recover unpaid Strata fines from the tenant and although they have not filed an application for this under a Monetary Order for money owed or compensation for damage or loss under the Residential tenancy Act(Act), regulations or tenancy agreement. As the landlords have included documentary evidence pertaining to this matter I have allowed the landlords to amend their claim to deal with this issue as the tenant would be aware from the landlords' evidence that this monetary award was being sought.

#### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

#### Background and Evidence

The landlord submits that this month to month tenancy started on September 01, 2011. Rent for this unit is \$1,000.00 per month and is due on the first of each month. The landlords have provided a copy of the tenancy agreement in evidence.

The landlords testify that the tenant failed to pay rent for October, November, December, 2011 and January 2012 to the sum of \$4,000.00. The landlords' states they served the tenant with a 10 Day Notice to End Tenancy on December 16, 2011 which states the tenant owes \$2,000.00 for October and November, 2011 and the Notice is effective on December 26, 2011. The landlords originally filed an application to recover the unpaid rent but this matter was dismissed with leave to reapply. The landlords state in this application they now also seek to recover the unpaid rent for December,2011.The landlords seek to amend their monetary claim to include unpaid rent for January, 2012.

The landlords' testify that the tenant was given a warning letter about excessive noise from his rental unit after the landlord was sent a warning letter from the Strata council on October, 11, 2011. The landlord testifies that the tenant did not comply with this warning and the noise continued. The landlord has submitted four letters from the Strata Council which shows the landlord has been fined \$200.00 for the first breach and \$200.00 for each breach after. The landlord is only claiming \$100.00 for the first breach seeks to recover the sum of \$400.00 for the following two breaches to a total sum of \$500.00.

The landlord seeks an Order of Possession for unpaid rent and also seeks a Monetary Order to recover the unpaid rent, the strata fines and filing fee of \$50.00.

### Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords undisputed documentary evidence and affirmed testimony before me. S. 26 of the *Act* states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, I find the tenant has failed to pay rent for October, November and December, 2011 and for January, 2012. I have agreed to allow the landlord to amend his application to include unpaid rent for January, 2012 as the tenant is still residing at the rental unit and would be aware that rent was due on January 01, 2012. Therefore, the landlord is entitled to recover the sum of **\$4,000.00** in unpaid rent from the tenant and will receive a Monetary Order pursuant to s. 67 of the *Act*.

With regard for the landlords claim to recover the fines imposed by the Strata Council I am satisfied that the tenant was in violation of the Strata Rules and regulations regarding excessive noise from the rental unit and find the landlords are entitled to recover the Strata fees imposed, as claimed, to the sum of **\$500.00** pursuant to s. 67 of the *Act*.

With regard to the landlords application for an Order of Possession; I have reviewed the documentation provided by the landlord for this application. As part of the application the landlord is required to provide a copy of the two page 10 Day Notice to End Tenancy due to unpaid rent or utilities. Page two of the notice provides information to the tenant about the reasons given on the Notice and the steps he can take to respond to the Notice.

In the documents before me the landlord has not provided page two of the Notice to End Tenancy and the landlord agrees that this second page was not served upon the tenant. In order for a legal notice to be valid and enforceable it must be complete. As a result I find that the landlords' application for an Order of Possession will be dismissed with leave to re-apply. The landlord is at liberty to serve the tenant with another complete 10 Day Notice for unpaid rent for February, 2012.

As the landlords have been partially successful with their claim the landlords are entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1). A Monetary Order has been issued pursuant to s. 67 for the sum of **\$4,550.00** comprised of unpaid rent, Strata fines and the filing fee.

### Conclusion

The landlords' application for an Order of Possession is dismissed with leave to reapply. The 10 Day Notice dated December 16, 2011 is cancelled.

I HEREBY FIND in favor of the landlords amended claim for unpaid rent. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,550.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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 03, 2012.

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Residential Tenancy Branch