



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

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 21, 2012. The tenant is deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. The landlord testifies that the Canada Post tracking information indicates that the tenant did not collect the registered mail.

The landlord appeared, gave sworn testimony, was 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.

### Issues(s) to be Decided

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

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

### Background and Evidence

The landlord testifies that this month to month tenancy started on December 01, 1998. Rent for this unit is \$800.00 per month and is due on the first of each month. The tenant paid a security deposit of \$400.00 on December 01, 1998.

The landlord testifies that the tenant owed a balance of rent for January, 2012 of \$184.40. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 05, 2012. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 14, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. The tenant did however pay \$184.40 to the landlord on January 16, 2012 and the landlord accepted this payment for use and occupancy only and does not reinstate the tenancy and informed the tenant of this on the receipt given for this payment.

The landlord testifies that the tenant has also failed to pay rent for February, 2012 to the sum of \$800.00.

The landlord seeks a Monetary Order to recover the outstanding rent and filing fee paid for this proceeding. The landlord also requests to keep the security deposit and accrued interest to offset against the unpaid rent and seeks an Order of Possession to take two days after service.

### Analysis

Section 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.*

I find the tenant did pay the outstanding rent for January, 2012 however as this sum was not paid within the five allowable days the landlord accepted it for use and occupancy only and did not re-instate the tenancy. I further find the tenant also failed to then pay rent for February, 2012. Consequently, I find that the landlords are entitled to recover rent arrears for February, 2012 to the sum of **\$800.00** pursuant to s.67 of the *Act*.

The landlords are therefore entitled to keep the tenants security deposit of **\$400.00** and accrued interest of **\$45.49** in partial satisfaction of the rent arrears pursuant to s. 38 (4)(b) of the *Act*.

As the landlords have been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a monetary order for the balance owing as follows:

Unpaid rent for February	\$800.00
Less security deposit and accrued interest	(-\$445.49)
Subtotal	\$354.51
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$404.51</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end.

As this Notice was posted on the tenants' door it was deemed served three days after posting and therefore the amended date of the Notice would be January 18, 2012 pursuant to s. 53 of the *Act*. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 the amended effective date of the Notice and grant the landlord an order of possession.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$404.51**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme 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 10, 2012.

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Residential Tenancy Branch