



# 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 the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and parking; late fees; and authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof of service the hearing documents were mailed to the tenant at the rental unit on February 8, 2012.

The landlord further testified that she posted the landlord's evidence and an amended application upon the tenant's door on February 10, 2012. The landlord entered the unit on February 13, 2012 for an inspection and observed the tenant's furniture still in the unit and the hearing documents she posted on his door on the counter.

Given the above, I was satisfied the tenant has been sufficiently served with the hearing documents, including the amended application, and I proceeded to hear from the landlord in the absence of the tenant.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for unpaid rent and parking, loss of rent and parking, and late fees for the months of January and February 2012?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The tenancy commenced May 1, 2009 and at that time the monthly rent was \$780.00 payable on the 1<sup>st</sup> day of every month. The tenant paid a \$390.00 security deposit. The monthly rent and parking has increased to \$843.47 after subsequent Notices of Rent Increases.

The tenant's rent cheque for January 2012 was returned for insufficient funds. On January 6, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent

(the Notice) on the tenant's door. The Notice indicates \$843.47 was outstanding as of January 1, 2012 and has a stated effective date of January 16, 2012. The tenant did not pay the outstanding rent and did not dispute the Notice. The tenant also continues to occupy the rental unit and his rent cheque for February 2012 was also returned for insufficient funds.

The landlord is seeking a Monetary Order calculated as follows:

Unpaid rent and parking – January 2012	\$ 843.47
NSF charge	25.00
Loss of rent and parking – February 2012	843.47
NSF charge	<u>25.00</u>
Total claim	\$ 1,736.94

Evidence provided by the landlord included copies of: the tenancy agreement; a parking addendum, a ledger for the tenant's account; the 10 Day Notice; and the registered mail receipt.

### Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

As the Notice was posted on the door, it is deemed to be received three days later. Accordingly, the effective date is automatically changed to read January 19, 2012 in accordance with section 53 of the Act.

Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on January 19, 2012 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Upon review of the tenancy agreement and parking addendum I find the landlord entitled to recover unpaid rent and parking for January 2012 and since the tenant has remained in possession of the rental unit in February 2012 I further award the landlord loss of revenue for the month of February 2012.

Upon review of the parking addendum I find the landlord has an entitlement to charge NSF fees where a payment is returned for insufficient funds. I accept that the landlord was entitled to claim an NSF charge for January 2012. However, I make no such award for February 2012 as I have found that the tenancy agreement and parking addendum terminated as of January 19, 2012.

I award the landlord the filing fee paid for this application and I authorize the landlord to retain the security deposit in partial satisfaction of the amounts awarded to the landlord. With this decision I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent and parking – January 2012	\$ 843.47
NSF charge – January 2012	25.00
Loss of rent and parking – February 2012	843.47
Filing fee	50.00
Less: security deposit	<u>(390.00)</u>
Monetary Order	\$ 1,371.94

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The tenancy has ended and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$1,371.94 to serve upon the tenant.

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 22, 2012.

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Residential Tenancy Branch