



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPR, MNR and FF

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated January 24, 2012. . The landlord also sought a Monetary Order for the unpaid rent and filing fee for this proceeding.

The landlord applicant and one of the tenants appeared.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent and

Whether or not the landlord is entitled to monetary compensation for rental arrears owed.

### **Background and Evidence**

The landlord submitted into evidence a copy of proof of service of the Notice of Hearing, a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated January 24, 2012, proof of service of the Ten-Day Notice and a copy of the tenancy agreement. The landlord testified that the one-year fixed term tenancy began on October 29, 2011 with rent of \$880 and a security deposit of \$440.00 was paid.

The landlord testified that the tenant fell into arrears in December for \$440.00 and asked to have the \$440.00 security deposit applied towards the rent owed. The landlord testified that she declined to accept this arrangement. The landlord testified that the tenant only paid \$440.00 for rent in January and on January 24, 2012, so the landlord served a Ten Day Notice to End Tenancy for Unpaid Rent. The landlord testified that the tenant made an attempt to pay the arrears with cheques dated February 1 and February 15, 2012, but she refused to accept the payments as the offer of payment came after the five-day deadline to cancel the Notice. The landlord testified that the tenant also failed to pay the \$880.00 owed on February 1, 2012. The landlord is

claiming \$1,760.00 plus the \$50.00 cost of the application. The landlord is also seeking an Order of Possession

The tenant disputed the landlord's application. The tenant testified that they attempted to pay the rent owed, but the landlord refused to accept the funds. The tenant testified that he did not receive the Ten Day Notice to End Tenancy for Unpaid Rent because he couldn't read it when it was served, so he discarded it. The tenant also argued that his rent was paid up to today's date.

### **Analysis**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement. Through testimony from both parties it has been established that the tenant did not pay the rent when it was due.

When a tenant fails to comply with section 26, then section 46 of the Act permits the landlord to end the tenancy through a Ten-Day Notice effective not earlier than 10 days after the date the tenant receives it. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. In this instance I find that the tenant did neither.

The Ten-day Notice also included written instructions on page 2 informing the respondent about how and when a tenant may dispute the notice if the claim is not being accepted. Under the heading "Important Facts" the form cautions that "*The tenant is not entitled to withhold rent unless ordered by a dispute resolution officer*".

In this instance I find that the tenant was in arrears at the time the Notice was served on July 31, 2010 and the tenant did not pay the arrears and in fact continued to withhold her rent for subsequent months afterward.

In any case, section 46(5) of the Act provides that if a tenant does not pay the rent or make an application for dispute resolution in accordance with the above, then the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.

I find that the tenant did not pay the outstanding rent within 5 days and did not formally apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

While I accept the defence put forward by the tenant stating that they sincerely tried to pay and had the payments refused by the landlord, I find that this fact would not suffice to impact a determination regarding the Notice for unpaid rent. The reason this is true is because the tenant's attempt to pay the arrears was made too late and fell beyond the 5-day deadline to cancel the Notice under the Act. I note that there is no provision in the Act that compels a landlord to negotiate a payment plan for arrears.

Given the above, I find that the landlord has established a total monetary claim of \$1,810.00 comprised of \$1,760.00 accrued rental arrears and the \$50.00 fee paid for this application. I order that the landlord retain the tenant's \$440.00 security deposit in partial satisfaction of the claim, leaving a balance of \$1,370.00 in favour of the landlord.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days on service. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the landlord a monetary order under section 67 for \$1,370.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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