



# 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 dealt with an Application for Dispute Resolution by the Landlord to obtain an Order or Possession for unpaid rent and a Monetary Order for unpaid rent, for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 24, 2012. Mail receipt numbers were provided in the Landlord's evidence. Based on the Landlord's submission I find the Tenant was sufficiently served with notice of today's proceeding.

The Landlords appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one appeared on behalf of the Tenant, despite him being served notice of today's hearing in accordance with section 89 of the *Residential Tenancy Act*.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement by failing to pay rent?
2. Has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord confirmed the parties entered into a fixed term tenancy agreement that began on August 1, 2011 and switched to a month to month tenancy after January 30, 2012. Rent is payable on the first of each month in the amount of \$1,300.00 and the

Tenant paid \$650.00 as the security deposit plus \$100.00 as the remote control deposit on July 26, 2011.

The Landlord advised that the Tenant's November 1, 2011 rent payment, which was paid by preauthorized debit, was returned insufficient funds and payment reversed November 8, 2011. On the same day the Landlord was advised the Tenant's toilet was plugged and overflowed into the rental unit. The Tenant has since refused to pay rent and has been very difficult to work with for the insurance company and disaster Relief Company. The Tenant has refused to pay rent since this toilet overflowed November 8, 2011; however the Landlords stated the Tenant did agree to pay rent last week and then did not follow through with that promise.

A 10 Day Notice was posted to the Tenant's door on January 10, 2012 which included the unpaid rent for November, December, and January, late payment fees of \$25.00 per month as provided for in section 10 of the tenancy agreement, plus bank charges of either \$28.00 or \$25.00 for the NSF fees. The Tenant continues to reside in the rental unit and continues to refuse to pay rent.

### Analysis

Where a tenant is served 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.

In this case the Notice was served to the Tenant on January 10, 2012 when it was posted to the Tenant's door. The Notice is deemed to have been received by the Tenant on January 13, 2012, three days after it was posted to his door, pursuant to section 90 of the Act. Accordingly I find the effective date of the Notice is January 23, 2012, pursuant to Section 90 of the Act. Since the Tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on January 23, 2012. Accordingly, I award the Landlord an Order of Possession.

The Landlord claims for unpaid rent of \$3,900.00 for November 2011, December 2011, and January 2012, (3 x \$1,300.00) pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the

first of each month. Accordingly I award the Landlord a monetary claim in the amount of **\$3,900.00** (3 X \$1,300.00) for unpaid rent.

The evidence supports that the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00, in accordance with section 7 of the Residential Tenancy Regulation. As the Tenants have been late in paying their November 2011, December 2011, and January 2012 rent, I find the Landlord is entitled to claim the late payment fees of **\$75.00** (3 x \$25.00).

Section 7 (1)(C) of the Residential Tenancy Regulation also provides that a Landlord may collect a service fee charged by a financial institution to the landlord for the return of a tenant's payment. The Landlord has sought such fees in the amount of \$81.00 which consists of NSF cheque charges of \$28.00 for November 2011, \$28.00 for December, and \$25.00 for January 2012. The Landlord did not submit evidence to support they were actually charged these fees from their financial institution; therefore I find there to be insufficient evidence to support this claim and it is hereby dismissed.

The Landlord has filed seeking loss of rent for February 2012 given that this tenancy ended based on the 10 Day Notice as noted above and the Tenant is still occupying the unit without paying rent. As the Landlord will not regain possession of the rental unit until sometime after service of the Order of Possession, I find it reasonable to conclude that on a balance of probabilities the Landlord will not be able to re-rent this unit prior to the end of February 2012. Based on the aforementioned I find that the Landlord has succeeded in proving their loss of rent for February 2012, and I approve their claim for **\$1,300.00**.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent (Nov 2011; Dec 2011; Jan 2012)	\$3,900.00
Late payment fees	75.00
Loss of February 2012 Rent	1,300.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$ 5,325.00</b>
<b>LESS: Security Deposit \$650.00 + Interest 0.00</b>	<b><u>-650.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>\$4,675.00</u></b>

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Respondent Tenant.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$4,675.00**. This Order is legally binding and must be served upon the Respondent 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 13, 2012.

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Residential Tenancy Branch