



# 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 in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation for loss - Section 67;
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by personal service on February 23, 2012 in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord states that the Tenants moved out of the unit the end of February 2012, that the Landlord has possession of the unit and that an Order for Possession is no longer required. The Landlord also states that no filing fee was made for the application. Accordingly, the claims for an Order of Possession and recovery of the filing fee are dismissed.

### Issue(s) to be Decided

Is the Landlord entitled to the amounts claimed?

### Background and Evidence

The tenancy began on September 15, 2010. Rent in the amount of \$850.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$425.00. The Tenant is \$209.00 in rental arrears for December 2011 and failed to pay rent for January and February 2012. The Landlord served the Tenant with a notice to end tenancy for non-payment of rent (the "Notice") on February 23, 2012 by posting the Notice on the door. Information on the file indicates that the Tenant has not filed an Application for Dispute Resolution. The Landlord filed as corroborating evidence, the tenancy agreement, the Notice, and a witness statement on proof of service of the Notice. The Landlord claims \$1,909.00 in unpaid rent.

The Landlord states that upon the Tenant moving out of the unit, the Landlord advertised the unit on Craigslist and received a couple of inquiries. The Landlord states that as the building is being turned into a "crime-free" building, the Landlord must take longer than usual to check prospective tenants. The Landlord states that no tenants have been found to date. The Landlord filed no corroborating evidence. The Landlord claims \$850.00 in lost rental income.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's testimony I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. I further find that the Tenant has not paid the rental arrears and that the Landlord has substantiated the claim for rental arrears of \$1,909.00.

In a claim for loss under the Act, regulation or tenancy agreement, the party claiming costs for the loss must prove, inter alia, that efforts were made to mitigate the loss by re-renting the premises. As the Landlord has failed to provide corroborating evidence that the unit was advertised, and taking into consideration the Landlord's evidence of the change in tenant selection process causing delay, I find that the Landlord has not substantiated efforts to mitigate the loss claimed and I therefore dismiss this part of the Landlord's application.

Setting the security deposit plus interest of \$425.00 off the Landlord's entitlement of \$1,909.00 leaves \$1,484.00 owing by the Tenant to the Landlord.

Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$425.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,484.00**. If necessary, this order may be filed in the Small Claims 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: March 12, 2012.

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Residential Tenancy Branch