



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of 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.

The parties appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### 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 parties agreed they entered into a written month to month tenancy that began on May 12, 2011. Rent is payable on the first of each month in the amount of \$700.00 plus \$150.00 for utilities. The Tenant paid \$350.00 on May 12, 2011 as the security deposit.

The Tenant confirmed receipt of the January 6, 2012 10 Day Notice to end Tenancy via registered mail in January 2012. He also confirmed he paid \$450.00 on February 16, 2012 and \$850.00 on January 30, 2012 towards his rent and utilities.

The Landlord affirmed that as of today's date the accumulated balance owing is \$1,800.00 which is comprised of \$100.00 owing for January 2012 rent plus \$1,400.00

for February and March rent (2 x \$700.00) plus \$300.00 for February and March utilities (2 x \$150.00).

### 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 6, 2012 when it was sent registered mail. The Notice is deemed to have been received by the Tenant on January 11, 2012, five days after it was mailed, pursuant to section 90 of the Act. Accordingly I find the effective date of the Notice is January 21, 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 21, 2012. Accordingly, I award the Landlord an Order of Possession.

The Landlord claims for unpaid rent and loss of rent and utilities of \$1,800.00 as the Tenant continues to reside in the unit after the effective date of the Notice; 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 and utilities are due monthly on the first of each month. Accordingly I award the Landlord a monetary claim in the amount of **\$1,800.00** (Jan rent of \$100.00 + Feb rent of \$700.00, + Mar rent of \$700.00, + \$150.00 Feb utility + \$150.00 March 20212 utility).

The Landlord has been successful with his 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 (Jan, Feb, Mar. 2012)	\$1,500.00
Unpaid Utilities (Feb & Mar 2012)	300.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$ 1,850.00
<b>LESS: Security Deposit \$350.00 + Interest 0.00</b>	<u>-350.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,500.00</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 **\$1,500.00**. 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: March 14, 2012.

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Residential Tenancy Branch