



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPC MND MNR MNSD MNDC FF

### Preliminary Issues

After reviewing the Landlord's application for dispute resolution, at the onset of the hearing, the Landlord stated she wished to amend her application to include a request for an Order of Possession for cause as a 1 Month Notice to End Tenancy had been issued prior to the 10 Day Notice and both remain undisputed.

After careful consideration of the aforementioned I granted the amendment to the Landlord's application, pursuant to section 64 (3)(c) of the Act that stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

### Introduction

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

Service of the hearing documents, by the Landlord to each Tenant, was done in accordance with section 89 of the Act, sent via registered mail on March 13, 2012. Mail receipt numbers were provided in the Landlord's verbal testimony (RW 642239359 CA and RW642239376CA). Based on the Landlord's submission I find each Tenant has been sufficiently served notice of this proceeding in accordance with the Act.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Have a 10 Day Notice and a 1 Month Notice to end tenancy been issued and served upon the Tenants in accordance with sections 46, 47, and 52 of the *Residential Tenancy Act* (the Act)?
2. Was the hydro meter damaged during the course of this tenancy?
3. If so, have the Landlords met the burden of proof to obtain an Order of Possession and a Monetary Order pursuant to sections 55 and 67 of the Act?

Background and Evidence

The Landlord affirmed the parties entered into a fixed term tenancy agreement that began on July 1, 2009 however the Tenants were permitted to occupy the unit early on June 15, 2009. The tenancy switched to a month to month tenancy after June 30, 2010. Rent is payable on the first of each month in the amount of \$1,080.00 and on May 28, 2009 the Tenants paid \$525.00 as the security deposit.

The Landlord advised that a 1 Month Notice to end tenancy was personally served to the Tenants January 24, 2012 and was not disputed. Then when the Tenants failed to pay February 2012 rent a 10 Day Notice was issued and served February 2, 2012. The Landlord confirmed that Tenants have since paid all of February 2012 rent in several payments, all of which were received and issued receipts noted "for use and occupancy only" to ensure they did not reinstate the tenancy. March 2012 rent remains outstanding for which the Landlord is seeking compensation for.

The Landlord advised that during the tenancy the Tenants failed to pay their hydro bill so the hydro was turned off by the power company. The Landlord attempted to have the hydro reconnected at which time it was determined that during the disconnection period someone had damaged the hydro meter socket in what appears to be during an attempted to reconnect or alter the hydro. Therefore, the hydro could not be reconnected until the meter socket was repaired at a cost of \$757.12 as supported by the invoice provided in the Landlord's evidence.

Analysis

I have carefully considered the aforementioned and the Landlord's evidence which included, amongst other things, copies of: the tenancy agreement, the electrician's invoice who reconnected the hydro meter, the 1 Month Notice to end tenancy, and the Landlord's written statement.

Where a tenant is served a 1 Month Notice to end tenancy the tenant has ten days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not dispute the Notice within ten days then, pursuant to Section 47(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 personally served to the Tenants on January 24, 2012 and the effective date of the Notice is February 29, 2012, pursuant to Section 90 of the Act. Since the Tenants did not dispute the Notice I find the tenancy ended on February 29, 2012 in accordance with section 44(1)(a)(iii) of the Act. Accordingly, I award the Landlord an Order of Possession.

As an Order of Possession has been granted based on the 1 Month Notice, I have made no findings of fact or law pertaining to the 10 Day Notice.

The Landlord claims for unpaid rent for March, 2012, which I have determined to be loss of rent for March 2012 as the tenancy ended February 29, 2012 and the Tenants continue to over hold the rental unit. Accordingly I award the Landlords **\$1,080.00** in loss of March 2012 rent

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Upon review of the Landlord's evidence I find that the hydro meter was damaged during the course of this tenancy as a result of the actions or neglect of the Tenants or their guest. Accordingly, I award the Landlord **\$757.12** for the cost of repairs to the hydro meter.

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:

Loss of March 2012 Rent	\$1,080.00
Repair to Hydro Meter	757.12
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$ 1,887.12</b>
<b>LESS: Security Deposit \$525.00 + Interest 0.00</b>	<b><u>-525.00</u></b>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,362.12</u></b>

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. 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 **\$1,362.12**. 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 28, 2012.

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Residential Tenancy Branch