



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent or rental income loss, recovery of the filing fee, and an order to keep all or part of the security deposit.

The Landlord provided affirmed testimony that they personally served the Tenant at the rental unit with the Application for Dispute Resolution and Notice of Hearing package on February 16, 2012. The Landlord provided proof of service signed by the Tenant into evidence.

I find that the Tenant was served the Application and Notice of Hearing in accordance with section 89 of the Residential Tenancy Act (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.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession, a monetary order for unpaid rent or rental income loss, recovery of the filing fee, and an order to keep all or part of the security deposit?

### Background and Evidence

The Landlord testified that the tenancy agreement commenced on May 16, 2003. The Landlord provided a copy of the tenancy agreement into evidence, signed by the Tenant. The Landlord stated that the rent is due on the first day of the month and that the current rent is \$880.00 per month. The Landlord stated that the Tenant paid the Landlord a security deposit of \$400.00 on May 13, 2003. The Landlord stated that the current Landlord took over the building on August 28, 2003 from the former Landlord.

Based on the testimony of the Landlord, the 10 Day Notice to End Tenancy for Unpaid Rent was posted at the rental unit of the Tenant on February 03, 2012. The Landlord provided a copy of a proof of service signed by a witness that was present when the Notice was posted on February 03, 2012. This Notice informed the Tenant that the

Notice would be cancelled if \$880.00 in outstanding rent for February 2012 was paid within five days. The Notice provided into evidence by the Landlord indicates that the Landlord wanted the Tenant to vacate on February 15, 2012. This Notice also explains the Tenant had five days to dispute the Notice. The Landlord testified that the Tenant advised them that he was currently unemployed, unable to pay his rent and that he would move out. The Landlord stated that the Tenant did not move out by the date of the Notice. The outstanding rent was not paid within five days of service of the Notice and the Tenant did not file an Application to dispute the Notice.

The Landlord filed an Application for Dispute Resolution on February 15, 2012. The Landlord testified that after they personally served the Tenant with the Application and Notice of Hearing package they spoke with the Tenant and he told them he was planning to move out for March 02, 2012. The Landlord stated that they scheduled a move out inspection with the Tenant for March 02, 2012, however, when they attended the rental unit the Tenant was still residing there and had not prepared to move.

The Landlord stated that the Tenant has not moved out and is still in the rental unit at the time of this hearing (March 06, 2012). The Landlord testified that because the Tenant has not moved out of the rental unit they have rental income loss of \$880.00 rent for March 2012.

The Landlord requests an order for the outstanding rent \$880.00 and the rental income loss \$880.00, as well as an order of possession of the rental unit. The Landlord is requesting to keep the security deposit of \$400.00 plus interest to offset the amounts owed by the Tenant.

The Landlord has also applied for reimbursement of the \$50.00 filing fee for this proceeding.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I accept the Landlord's evidence that the Tenant was properly served with the 10 Day Notice to End Tenancy for Unpaid Rent on February 03, 2012 in accordance with the Residential Tenancy Act (the "Act") and Policy Guideline.

As the Notice was served on the Tenant by posting on the door of the rental unit on February 03, 2012, it was deemed to have been served within three days (February 06, 2012). The Notice states that the Tenant had five days to pay the full amount of the outstanding rent, or apply for Dispute Resolution, or the tenancy would end from the service date. The Tenant did not pay the full amount of outstanding rent and did not apply to dispute the Notice to End Tenancy within five days from the date of service. The deadline to do so was February 11, 2012. The Landlord indicated on the Notice that the Tenant had until February 15, 2012 to vacate the premises, however this date

corrects to February 16, 2012 (10 days from the deemed service date) pursuant to the service provisions set out in the Act and the Residential Tenancy Policy Guideline. I find that rent was not paid within five days, the Tenant did not file an Application to dispute the Notice, and the Tenant is still in the rental unit as of the date of this hearing.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on February 16, 2012, which is 10 days after the effective date of the Notice. Therefore, I find that the Landlord is entitled to an order of possession.

Section 26 of the Act requires a Tenant to pay rent when it is due under the tenancy agreement. In this case, the tenancy agreement is that rent is due on the first of each month. I find that the Tenant failed to pay the outstanding rent for February 2012 in the amount of \$880.00

As the Tenant did not vacate the rental unit in accordance with the Notice and is still in the rental unit at the time of this hearing (March 06, 2012), I find that the Landlord is entitled to rental income loss of \$880.00 for March 2012 as they were not able to rent out the rental unit for March, and the Tenant has not paid rent.

I find that the Landlord has established a monetary claim of \$1,760.00, comprised of rent owing for February 2012 (\$880.00), and rental income loss for March 2012 (\$880.00).

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. I have added this amount to the monetary order against the Tenant bringing the total amount owing to \$1,810.00.

I order that the Landlord retain \$414.16, which represents the security deposit (\$400.00) plus interest to date (\$14.16), in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,395.84**.

### Conclusion

I find that the Landlord is entitled to an order of possession effective **two days after service** on the Tenant. This order must be served on the Tenant and may be filed in the Supreme Court.

I find that the Landlord may keep the security deposit, plus interest to date, in partial satisfaction of the claim and is granted a monetary order for the balance due in the amount of **\$1,395.84**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims).

The orders accompany the Landlord's copy of this decision.

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 06, 2012.

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Residential Tenancy Branch