



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing, all of which has been reviewed and is considered in this Decision. However, despite being served with the Landlord Application for Dispute Resolution, evidence package, and notice of hearing documents by registered mail on February 21, 2012, the tenant did not attend. The landlord provided evidence of having sent the registered mail on that date, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The landlord's agent testified that this fixed term tenancy began on October 1, 2010 and expired on September 30, 2011, and then reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$695.00 per month is payable in advance on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$347.50 and no pet damage deposit was collected. A copy of the tenancy agreement was provided in advance of the hearing.

The landlord's agent further testified that the tenant failed to pay rent in full when it was due for the month of December, 2011, having only paid \$200.00 to the landlord.

Further, the tenant failed to pay any rent for the months of January, February or March, 2012.

The landlord served the tenant on February 6, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by registered mail. A copy of a print-out from the Canada Post tracking website was provided prior to the hearing as evidence of having sent the notice to end tenancy to the tenant. The landlord's agent also provided a copy of the notice to end the tenancy, however only 1 page of the 2-page form has been provided. The landlord's agent testified that both pages of the 2-page form were served on the tenant, and that the second page is on the back of the first page, and the second page therefore did not fax to the Residential Tenancy Branch with the other documentary evidence. The notice is dated February 6, 2012 and states that the tenant failed to pay rent in the amount of \$1,885.00 that was due on February 1, 2012. The notice contains an effective date of vacancy of February 16, 2012.

The landlord's agent further testified that the tenant has not served the landlord with an application for dispute resolution and the landlord's agent is unaware of any application made by the tenant disputing the notice to end tenancy. Also, no portion of the security deposit has been applied to rent or returned to the tenant and the landlord still holds that money in trust.

The landlord's agent also testified that since the filing of the application for dispute resolution, the tenant is further in arrears of rent than the amount indicated on the notice to end tenancy. The landlord claims an Order of Possession and a monetary order in the amount of \$2,580.00 for unpaid rent, in addition to recovery of the \$50.00 filing fee for the cost of this application.

### Analysis

I accept the testimony of the landlord's agent, and I find that the tenant was served with the notice to end tenancy as declared by the landlord. The *Residential Tenancy Act* states that documents served by registered mail are deemed to have been served 5 days after mailing, and I find that the tenant is deemed to have been served with the notice to end tenancy on February 11, 2012. The *Act* also states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent, the tenant must pay the rent in full or dispute the notice within 5 days. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must move out of the rental unit by that date.

I further find that the effective date of vacancy contained in the notice to end tenancy ought to read February 21, 2012. The *Residential Tenancy Act* also provides that if an

incorrect effective date is contained in a notice to end tenancy, the date is automatically changed to the earliest date that complies with the *Act*, which I find to be February 21, 2012. I accept the testimony of the landlord's agent that the tenant has not served the landlord with an application for dispute resolution disputing the notice, and I therefore find that the tenant is conclusively presumed to have accepted that the tenancy has ended and landlord is entitled to an Order of Possession for unpaid rent or utilities.

I also accept the testimony of the landlord's agent that the tenant has fallen further into arrears of rent since the filing of the landlord's application, and I find that the landlord is entitled to a monetary order for unpaid rent in the amount of \$2,580.00. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlord has not applied for an order permitting the landlord to keep all or part of the security deposit in partial satisfaction of the claim, and therefore, I leave it to the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,630.00.

I order the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

These orders are final and binding on the parties and may be enforced.

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 07, 2012.

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Residential Tenancy Branch