



# 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 the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and authority to retain the security deposit. The tenant did not appear at the hearing. I heard that the landlord sent the hearing documents to the tenant at the rental unit via registered mail on February 28, 2012. I was provided a registered mail tracking number as proof of service and testimony that the mail had not been returned to sender.

The landlord's agent testified that the landlord heard from a neighbour that the tenant may have vacated the unit on March 2, 2012. The landlord entered the unit March 3, 2012 and confirmed the tenant had vacated the unit and keys were left inside.

I was satisfied that at the time of mailing the hearing documents the tenant was still residing at the rental unit. Therefore, I found the tenant sufficiently served with the hearing documents and I proceeded to hear from the landlord's agent without the tenant present.

As the landlord has regained possession of the rental unit the landlord no longer requires an Order of Possession and I do not provide one with this decision.

### Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent or loss of rent for the months of February and March 2012?
2. Is the landlord authorized to retain the security deposit in partial satisfaction of rent owed to the landlord?

### Background and Evidence

I was provided the following undisputed evidence: The tenancy commenced November 1, 2011 and the tenant paid a \$597.50 security deposit. The tenant was required to pay rent of \$1,195.00 on the 1<sup>st</sup> day of every month for a fixed term set to expire November

1, 2012. The tenant's rent cheque for February 2012 was dishonoured. On February 19, 2012 the landlord posted both pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice indicates \$1,195.00 in rent was outstanding as of February 1, 2012 and has a stated effective date of February 27, 2012. The tenant did not pay the outstanding rent. In addition, the landlord attended the tenant's bank to see if the March 2012 rent cheque would clear and he was advised by the tenant's bank that it would not.

With this application the landlord is seeking to recover unpaid rent and loss of rent for the months of February 2012 and March 2102.

Documentary evidence provided by the landlord included copies of: page 1 of the 10 Day Notice; the signatory page of the tenancy agreement; bank advice statements for previous NSF cheques; the March 2012 rent cheque; and, a letter from the tenant's bank dated March 2, 2012.

### Analysis

When a tenant receives 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.

Since the Notice was posted on the door on February 19, 2012 it is deemed to be received by the tenant three days later. Accordingly, the effective date of the Notice automatically changed to read March 3, 2012.

Based upon all of the evidence before me, I find the landlord entitled to recover unpaid rent and loss of rent from the tenant for the months of February and March 2012. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application. The landlord is provided a Monetary Order calculated as follows:

|                        |                 |
|------------------------|-----------------|
| February 2012 rent     | \$ 1,195.00     |
| March 2012 rent        | 1,195.00        |
| Filing fee             | 50.00           |
| Less: security deposit | <u>(597.50)</u> |
| Monetary Order         | \$ 1,842.50     |

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,842.50 to serve upon the 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: April 02, 2012.

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Residential Tenancy Branch