



# 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 repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on February 27, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants are deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

This month to month tenancy started on April 15, 2011. Rent for this unit is \$1,450.00 per month and is due on the first day of each month in advance.

The landlord's agent testifies that the tenants failed to pay all the rent for January, 2012 leaving an outstanding balance of \$950.00. The tenants failed to pay all the rent for February, 2012 leaving an outstanding balance of \$1,230.00. The landlord issued a 10 Day Notice to the tenants in January, 2012 and another 10 Day Notice was served upon the tenants on February 02, 2012 by posting the Notice to the tenants' door. This Notice states the tenants owe rent of \$2,400.00. The Notice states the tenants have five days to either pay the rent or dispute the Notice or the tenancy will end on February 15, 2012.

The landlord's agent states the tenants have not paid the outstanding rent and have now failed to pay rent for March, 2012 to the sum of \$1,450.00. The landlord seeks an Order of Possession to take effect as soon as possible and a Monetary Order to recover the unpaid rent and filing fee.

The landlord has provided copies of the tenancy agreement, the 10 Day Notices and proof of service of the Notices in evidence.

### Analysis

Section 26 of the *Act* states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

The landlord has established that rent is due on the first day of each month and has established that the tenants failed to pay all the rent due for January, February and

March, 2012. Consequently, I find that the landlord is entitled to recover rent arrears of **\$3,630.00** and a Monetary Order has been issued pursuant to s. 67 of the *Act*.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted to the tenant's door on February 02, 2012 it was deemed served three days later on February 03, 2012. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the landlord has been successful with this claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$3,630.00
Filing fee	\$50.00
Total amount due to the landlord	\$3,680.00

### Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,680.00**. The order must be served on the Respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenants. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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 15, 2012.

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Residential Tenancy Branch