



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation or loss – Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of 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.

### Preliminary Matter

The Landlord states that it was discovered on March 26, 2012, that the Tenants had moved out of the unit. As a result, the Landlord no longer requires an Order of Possession. Accordingly, I dismiss this part of the application.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on May 15, 2010. Rent in the amount of \$850.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$412.50 and a pet deposit in the amount of \$200.00.

The Tenant failed to rent for March 2012 and on March 2, 2012 the Landlord served the Tenant with a notice to end tenancy for non-payment of rent (the "Notice") by posting the Notice on the door. The Tenant has not filed an Application for Dispute Resolution and has not paid the outstanding rent. The tenancy agreement provides for a \$20.00 late fee where rent is paid late and \$20.00 per month for parking. The Landlord claims \$890.00 in unpaid rent, parking and late fee for March 2012 and the same amounts for April 2012. The Landlord states that as a result of the Tenant not informing the Landlord when they were moving out, there was no opportunity to ready the unit by painting and cleaning for a new tenancy to commence April 1, 2012. The Landlord states that the unit was advertised in a bulk advertisement that runs constantly and that the unit is still empty.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent. Given these facts, find that the Landlord has established a monetary claim for **\$890.00** in unpaid rent, parking and late fee for March 2012.

Where a tenancy ends, no rent is payable after the end of the tenancy. Lost rental income may be payable where a landlord substantiates that an act or negligence of the Tenant has caused such income to be lost. In this case the Landlord ended the tenancy with an effective date of March 13, 2012 and the tenancy has been conclusively presumed to end on this date. Given that the Landlord provided no corroborating evidence that unit required painting and cleaning following the end of the tenancy to the extent that the unit could not be rented for any period of time, I cannot find that the Tenant by any act or negligence caused the Landlord any lost rental. I find therefore that the Landlord has not substantiated a loss for April and May rent as claimed and I dismiss this part of the application.

The Landlord is entitled to recovery of the **\$50.00** filing fee for a total monetary amount of **\$940.00**. Setting the security and pet deposit plus interest of **\$612.50** off the entitlement leaves the amount of **\$327.50** payable by the Tenant to the Landlord.

#### Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$612.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$327.50**. If necessary, this order may be filed in the Small Claims 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: April 10, 2012.

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Residential Tenancy Branch