



# 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 was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent and utilities; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; 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 April 17, 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 landlord appeared, gave sworn testimony, was provided the opportunity to present his 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*.

### 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 due to Unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The landlord testifies that this month to month tenancy started on December 01, 2011 with the female tenant (CDR), although the tenant CDR did not move into the unit till four or five days later. Rent for this unit was agreed at \$625.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$325.00 on December 04, 2011.

The landlord testifies that he had a verbal agreement for the tenant CDR to rent this unit and the tenant informed the landlord that the tenant's boyfriend would move into the unit about a month later. The landlord testifies that the tenant's boyfriend did move into the unit approximately two weeks later and brought with him his dog even though the tenant was aware that no dogs were allowed in the unit. The landlord states the tenant's boyfriend was a roommate of the tenant and was not part of the original verbal tenancy agreement.

The landlord testifies that the tenant informed the landlord that social services would pay the rent directly to the landlord. The landlord testifies that no rent was received for December, 2011. The tenant made repeated promises that the rent would be paid however no rent was received by the landlord throughout December, 2011 and a 10 Day Notice to End Tenancy was served to the tenant by leaving it personally with the tenant's boyfriend on December 30, 2011. The 10 Day Notice states that the tenant owes rent of \$625.00 due on December 01, 2011. This Notice informs the tenant that she has five days to pay the rent, or dispute the notice or the tenancy will end on January 31, 2012. The landlord testifies that no rent has been received from the tenant since that Notice was issued. The landlord seeks to recover unpaid rent for December, 2011 and for January, February, March and April, 2012. The landlord has requested to amend his application to include unpaid rent for May, 2012.

The landlord seeks an Order of Possession effective as soon as possible and a Monetary Order for \$3,750.00. The landlord seeks to keep the tenants security deposit of \$325.00 to offset against the unpaid rent.

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.*

Consequently I am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for December, 2011 and for January, February, March, April and May, 2012. I have amended the landlord's application to include unpaid rent for May, 2012 as the tenant continues to reside at the rental unit and would be aware that rent was due on May 01, 2012. The landlord is entitled to recover rent arrears to the sum of **\$3,750.00** pursuant to s.67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$325.00** in partial payment of the rent arrears.

As the landlord have been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$3,750.00
Less Security Deposit	(-\$325.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$3,475.00</b>

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on December 30, 2011. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant 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 tenant is 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*.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,475.00**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

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

The landlord has named the tenant and her roommate on the application. As the tenancy was agreed with the female tenant CDR and not the tenant roommate CP the tenant's roommate has no rights or responsibilities under the *Act* and will therefore not be named on any Orders issued to the landlord.

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: May 04, 2012.

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Residential Tenancy Branch