



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with a landlord's application for an Order of possession for unpaid rent and a Monetary Order for unpaid rent and loss of rent; and, authorization to retain the security deposit. The landlord identified two tenants in filing this application. Neither respondent appeared at the hearing.

The landlord testified that the hearing documents were sent to the female tenant on May 16, 2012 and the documents were successfully delivered. The landlord provided a registered mail tracking number as proof of service. The landlord also submitted that the male co-tenant has not resided at the rental unit for quite some time.

I was satisfied the female tenant has been sufficiently served with the hearing documents and I proceeded to hear this application against her. I have amended the application to exclude the male tenant as I was not satisfied he was been sufficiently served with the hearing documents.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and/or loss of rent?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The landlord provided the following undisputed evidence: The co-tenancy commenced October 19, 2011 and the tenants paid a \$425.00 security deposit. The tenants are required to pay rent of \$850.00 on the 1<sup>st</sup> day of every month. After the fixed term of three months expired the tenancy converted to a month-to-month tenancy. The landlord's received \$425.00 in rent for the month of April 2012 and \$425.00 for May 2012. On May 3, 2012 the landlord personally served the female tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) in the presence of a witness. The Notice indicates \$850.00 in rent was outstanding as of May 1, 2012 and has a stated

effective date of May 13, 2012. Upon receiving the Notice the tenant did not pay the outstanding rent or dispute the Notice.

The landlord is seeking to recover the unpaid rent of \$850.00 for April and May 2012. The landlord also sought recovery of the loss of rent for June 2012. The landlord stated that a further \$425.00 has been received from the tenant in June 2012.

Provided as documentary evidence for this hearing were copies of: the 10 Day Notice; Proof of Service of the 10 Day Notice; and, the tenancy agreement.

### 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 tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on May 13, 2012 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Upon review of the written tenancy agreement submitted as evidence, I note that at the end of the fixed term of January 31, 2012 the tenants were required to vacate the rental unit and the tenancy would come to an end on that date. As I heard that the one or both of the tenants continued to occupy the rental unit and the landlord had continued to accept rent after the expiration of the fixed term, I find the parties had a verbal agreement in place for a month-to-month tenancy. I also accept that the rent remained at \$850.00 per month under the verbal agreement.

Whether the month-to-month tenancy was with the female tenant only or a co-tenancy both tenants, I find the landlord entitled to recover unpaid rent of \$850.00 from the female tenant. That is because a landlord is entitled to pursue one or both tenants of a co-tenancy agreement. Where a landlord pursues one tenant for unpaid rent it is up to the co-tenants to apportion any debt related to the tenancy among themselves.

I further award the landlord loss of rent for the month of June 2012 as the tenant did not give sufficient notice to end the tenancy.

I authorize the landlord to retain the security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

April and May 2012 unpaid rent	\$ 850.00
June 2012 loss of rent	850.00
Less: partial payment received in June	(425.00)
Filing fee	50.00
Less: security deposit	<u>(425.00)</u>
Monetary Order	\$ 900.00

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 provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$900.00 to serve upon the tenant and enforce as necessary.

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: June 05, 2012.

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Residential Tenancy Branch