



# 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 landlords' application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlords' agent testified that she and the male landlord personally served the hearing documents, including the landlords' evidence, upon the tenant on June 6, 2012 at the rental unit. I was satisfied the tenant was sufficiently served with the hearing package in a manner that complies with the Act and I proceeded to hear from the landlords' agent without the tenant present.

The landlords' agent requested the application be amended to include authorization to retain the security deposit and pet deposit in partial satisfaction of rent owed to the landlord. I found this request not prejudicial to the tenant and considered that request in making this decision.

### Issue(s) to be Decided

1. Are the landlords entitled to an Order of Possession?
2. Are the landlords entitled to a Monetary Order for unpaid rent and utilities?
3. Are the landlords authorized to retain the tenant's security deposit and pet deposit in partial satisfaction of the rent owed the landlord?

### Background and Evidence

The month to month tenancy commenced April 1, 2012. The tenant paid a \$1,650.00 security deposit and a \$1,650.00 pet deposit. The tenant is required to pay rent of \$3,300.00 on the 1<sup>st</sup> day of every month under the terms of the tenancy agreement. The tenant paid the landlords \$700.00 for rent in April 2012.

The tenant provided a cheque to the landlord in the amount of \$5,900.00 dated April 20, 2012 and on April 23, 2012 it was returned for insufficient funds. On May 16, 2012 the landlord personally served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent indicating \$5,900.00 in rent was outstanding and \$100.00 in utilities that were

demanded in writing on May 5, 2012. The tenant signed the Proof of Service acknowledging receipt of the 10 Day Notice. The tenant provided the landlord a cheque in the amount of \$3,400.00 dated May 19, 2012. The cheque was returned for insufficient funds.

The landlord is seeking to recover unpaid rent of \$2,600.00 for April 2012; \$3,300.00 for May 2012; \$3,300.00 for June 2012; plus, utilities of \$100.00 for a total claim of \$9,300.00.

The landlord's agent confirmed the tenant is still in possession of the rental unit and requested an Order of Possession be provided to the landlords.

The landlord provided copies the following documents as evidence for this proceeding: the tenancy agreement; the 10 Day Notice issued May 16, 2012; a signed Proof of Service of the 10 Day Notice; and, copies of the two NSF cheques and returned cheque notices.

### 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 26, 2012 and the landlords are 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.

Based upon the undisputed evidence before me, I find the landlords entitled to recover unpaid rent for the months of April 2012 and May 2012 in the amount of \$5,900.00. As the tenant continued to reside in the rental unit in June 2012 I further award the landlords loss of rent for the month of June 2012 in the amount of \$3,300.00.

I dismiss the landlords' request for utilities of \$100.00 as this claim was unsubstantiated by any evidence.

I authorize the landlords to retain the tenant's security deposit and pet deposit in partial satisfaction of the rent owed the landlord. I also award the landlords the filing fee paid for this application.

In light of the above, the landlords are provided a Monetary Order calculated as follows:

|                        |                   |
|------------------------|-------------------|
| April 2012 unpaid rent | \$ 2,600.00       |
| May 2012 unpaid rent   | 3,300.00          |
| June 2012 loss of rent | 3,300.00          |
| Filing fee             | 100.00            |
| Less: security deposit | (1,650.00)        |
| Less: pet deposit      | <u>(1,650.00)</u> |
| Monetary Order         | \$ 6,000.00       |

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

### Conclusion

The landlords have been provided an Order of Possession effective two (2) days after service upon the tenant. The landlords have been authorized to retain the security deposit and pet deposit. The landlords have been provided a Monetary Order for the balance owing of \$6,000.00 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 21, 2012.

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Residential Tenancy Branch