



# 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 response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

An agent for the landlord attended the conference call hearing, gave affirmed testimony and provided evidence in advance of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on April 24, 2012, the tenant did not attend. The landlord's agent provided evidence of such mailing, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

### Background and Evidence

The landlord's agent testified that the tenant currently resides in the rental unit, although the landlord's agent is not sure when the tenancy began or whether or not the tenancy agreement was for a fixed term or a month-to-month tenancy; whether or not there is a written tenancy agreement is also unknown. Rent in the amount of \$425.00 per month is payable in advance on the 1<sup>st</sup> day of each month. The landlord's agent was unable to testify as to the amounts or dates that any security deposit or pet damage deposit may have been collected by the landlord.

The landlord's agent further testified that the tenant is in arrears the sum of \$515.00 for rent, being \$25.00 outstanding for February, 2012, \$65.00 for March, and \$425.00 for April, 2012. Since the filing of the application, the tenant is now further in arrears for the month of May, 2012 in the amount of \$425.00. The landlord's agent was unable to provide any testimony with respect to the dates and amounts that the tenant did pay to the landlord. A Monetary Order Worksheet signed by the landlord has been provided which sets out all of those amounts for a total of \$940.00.

Also provided in advance of the hearing is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, which is dated April 2, 2012 and states that the tenant failed to pay rent in the amount of \$572.00 that was due on the 2<sup>nd</sup> day of April, 2012. The notice contains an expected date of vacancy of April 2, 2012, which is the same day that it was issued, and the same date that rent was due, although the landlord's agent testified that rent is payable on the 1<sup>st</sup> day of each month. Both pages of the 2-page form have been provided.

The landlord's agent also provided another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 2, 2012 which states that the tenant failed to pay rent in the amount of \$482.00 that was due on March 1, 2012 and contains an expected date of vacancy of March 2, 2012, again being the same date that the form was issued.

The landlord's agent further testified that the landlord's first language is not English, and the landlord's agent completed the Landlord's Application for Dispute Resolution and the Monetary Order Worksheet for the landlord once learning of what is owed. The landlord's agent further testified that the notices to end tenancy contain incorrect amounts.

### Analysis

The *Residential Tenancy Act* states that if a tenant fails to pay rent when it is due, the landlord may serve the tenant with a notice to end tenancy. Once served, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice which must be no less than 10 days after the date the tenant is served. The *Act* also states that incorrect dates in a notice to end tenancy are automatically changed to the nearest date that complies with the *Act*. However, the onus is on the landlord to provide satisfactory information with respect to the amounts paid and owed by the tenant, and the landlord's agent testified that the amounts contained in the notices to end tenancy are incorrect. The landlord's agent was unable to provide any information about amounts paid by the tenant, or the amount of any

security deposit or pet damage deposit held in trust by the landlord. If a landlord applies for a monetary order, the security deposit is usually set off from any amounts due to the landlord. In this case I have no evidence to satisfy me of the amount of a monetary award the landlord may be entitled to, and the application must be dismissed.

The landlord is at liberty to serve the tenant with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and apply for dispute resolution to obtain an Order of Possession and a monetary order if the tenant does not pay the rent and rental arrears within 5 days of service. Alternatively, the *Act* permits a landlord to issue a 1 Month Notice to End Tenancy for Cause if the tenant is continually late paying rent.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

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 17, 2012.

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Residential Tenancy Branch