



# 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 an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord and the tenant (CY) appeared gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The landlord stated that she served the tenant (SB) by leaving a copy of the application for dispute resolution and notice of hearing in the tenant's mailbox.

Under Section 12 of the policy guidelines leaving a copy of the application for dispute resolution and notice of hearing in the tenant's mailbox is not sufficient service under the Act, and the tenant (SB) did not appear. I find the tenant (SB) has not been duly served as required by the Act, Therefore, I dismiss the landlord's application for a monetary order against the tenant (SB) with leave to reapply.

### 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?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

Based on the testimony of landlord, I find that the tenants were served with a notice to end tenancy for non-payment of rent on March 20, 2012, by personal service. The notice informed the tenants that the notice would be cancelled if the rent was paid within five days. The notice also explains the tenants had five days to dispute the notice.

The landlord testified the tenants owe \$1,750.00 in outstanding rent, \$225.00 for March, \$500.00 for April, and \$1,000.00 for May 1, 2012.

The landlord testified that the tenants have not paid the gas bill as required by the tenancy agreement and they currently owe \$311.08. This covers the period of February 9, 2012 to April 9, 2012.

The tenant (CY) acknowledged rent and utilities have not been paid. The tenant stated they are currently in the process of moving out of the rental unit.

### Analysis

Based on the above, the testimony, and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord has established a total monetary claim of \$2,111.08 comprised of rent owed, unpaid utilities and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,611.08 against the tenant (CY).

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenants failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due against the tenant (CY).

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 03, 2012.

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Residential Tenancy Branch