



# 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 conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent; a Monetary Order for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

The landlord participated in the hearing and provided affirmed testimony. He testified that he served the Notice of a Dispute Resolution Hearing to the tenant by way of registered mail sent on April 18, 2012, and provided a Canada Post tracking number. The tenant did not participate and the hearing proceeded in the tenant's absence.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on October 1, 2011. The rent is \$760.00 per month and the tenant paid a security deposit of \$380.00.

The landlord testified that the tenant has not paid rent and that the tenant said that she was moving out. The landlord said that the tenant is still occupying in the unit to date.

In his documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy served on the tenant on March 2, 2012 by posting the notice on the tenant's door.

The landlord submitted a monetary claim of \$338.33 for unpaid rent in March 2012; \$760.00 for April 2012; and \$760.00 for the loss of rental income for May 2012 for a claim totalling \$1858.33.

### Analysis

I accept the landlord's undisputed testimony that he served the tenant with the Notice of Dispute Resolution in a proper manner pursuant to section 89 of the *Residential Tenancy Act*. I find that the tenant knew, or ought to have had knowledge of the date scheduled for this hearing.

Section 46(5) of the *Residential Tenancy Act* provides that if a tenant who has received a notice to end tenancy for non-payment of rent does not pay the rent or makes an application for dispute resolution within 5 days, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date. The tenant in this matter has not filed an application for dispute resolution. The landlord's Notice to End Tenancy is valid and on that basis the landlord is entitled to an order of possession.

Based on the evidence I accept that the tenant did not pay rent and that the landlord is entitled to recover the loss of rental income as claimed.

### Conclusion

I grant the landlord an Order of Possession effective two days from the date the order is served upon the tenant.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

The landlord established a claim of \$1858.33. I authorize the landlord to retain the tenant's \$380.00 security deposit for a balance owing of \$1478.33. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$1528.33.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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 08, 2012.

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Residential Tenancy Branch