



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on August 2008. Rent in the amount of \$700.00 is payable in advance on the first day of each month. No security deposit was collected. The Tenant failed to pay rent for the months August, September, October, November 2011 and January, February, March, April and May 2012. On April 3, 2012 the Landlord served the Tenant with a notice to end tenancy for non-payment of rent. The Tenant has not filed an Application for Dispute Resolution and has not moved out of the unit. The Tenant states that rent was withheld due to sewage back-up occurring in the unit and that this has not been fixed by the Landlord. The Tenant also states that the second

named person in the application is her son who is a minor and attends school. No tenancy agreement was filed by the Landlord as evidence. The Landlord claims \$6,300.00 and asks for an order of possession to be effective May 22, 2012.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Based on the Landlord's evidence I find that the Tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The Tenant has not filed an application to dispute the notice and has not paid the outstanding rent.

Although the Tenant provided a reason for not paying the rent, this reason is not valid. Given these facts, I find that the Landlord is entitled to an **Order of Possession**. The Tenant is at liberty to make an application for dispute resolution and seek compensation in relation to the sewage back-up.

I also find that the Landlord has established a monetary claim for **\$6,300.00** in unpaid rent. Given the lack of a tenancy agreement indicating that the second named person in the application is a tenant and not an occupant, and considering the Tenant's evidence of this person's age and school attendance, I decline to make a monetary order against the second named person. The Landlord is also entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$6,350.00**.

### Conclusion

**I grant** an Order of Possession to the Landlord effective May 22, 2012.

**I grant** the Landlord an order under Section 67 of the Act for **\$6,350.00**. If necessary, this order may be filed 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 15, 2012.

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Residential Tenancy Branch