



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent or utilities, to keep all or part of pet and or security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The parties affirmed that they entered into a written month to month tenancy agreement that began on October 1, 2010. Rent is payable on the first of each month in the amount of \$730.00 and on October 1, 2010, the Tenant paid \$350.00 as the security deposit.

The Landlord confirmed service of the 10 Day Notice, in person to the Tenant on April 2, 2012, which was acknowledged by the Tenant.

The Tenant affirmed he has not paid April 1<sup>st</sup> or May 1<sup>st</sup>, 2012 rents. He stated he is on disability and works to make ends meet however in March he fell and was not able to work. He confirmed that he did not have the funds to pay April and May 2012 rents.

The Landlord confirmed he was seeking to recover a late payment charge however he was not able to advise which section of their tenancy agreement provided for late payment fees.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

**Order of Possession** - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, April 12, 2012 and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$730.00 for April 2012, pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the Landlord has met the burden of proof and I award him a monetary claim of **\$730.00** for April 2012 unpaid rent.

**Loss of rent** – As noted above this tenancy ended April 12, 2012, in accordance with the 10 Day Notice therefore I find the Landlord is seeking loss of rent for May 2012 given that the Tenant has failed to pay May 1, 2012 rent and is still occupying the unit. The Landlord will not regain possession of the unit until after service of the Order of Possession and will therefore lose rent for May 2012.

Based on the aforementioned I find that the Landlord has succeeded in proving their loss, as listed above, and I approve their claim for **\$730.00** for loss of May 2012 rent.

**Late payment charges** – Pursuant with section 7 of the Residential Tenancy Regulation a tenancy agreement must provide for a landlord to charge late payment fees. There is no evidence before me to prove the tenancy agreement provides for late payment charges, therefore I dismiss the Landlords claim.

The Landlord has primarily succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent for April 2012	\$ 730.00
Loss of rent for May 2012	730.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,460.00
<b>LESS:</b> Security Deposit \$350.00 + Interest 0.00	<u>-350.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,110.00</u></b>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$1,110.00**. This Order is legally binding and must be served upon the Tenant.

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