



# 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 the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*"), seeking an order of possession for unpaid rent or utilities; a monetary order for unpaid rent or utilities, to keep all or part of security deposit, for money or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee.

The tenant and the agent for the landlord appeared by conference call and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

### Preliminary Matter

The agent for the landlord testified that although the application was submitted on May 24, 2012, and included June 2012 rent, the tenant has not paid any money towards June 2012 rent. The agent for the landlord stated that the tenant continues to occupy the rental unit.

### Issue(s) to be Decided

- Should the landlord be granted an order of possession?
- Should the landlord be granted a monetary order?
- Should the landlord recover the filing fee?

### Background and Evidence

The landlord provided a copy of the signed tenancy agreement as evidence. The tenancy agreement shows a start date of September 1, 1995. Both parties agree that the current monthly rent of \$2,929.00 was due on the first day of each month. The landlord testified that a security deposit of \$997.00 was received from the tenant at the start of the tenancy on September 1, 1995.

The landlord testified that no rent has been paid for the months of April, May and June 2012, for a total of \$8,787.00 in unpaid rent. The tenant confirmed that he continues to occupy the rental unit and agreed that he has not paid rent for the months of April, May and June 2012. The tenant stated that he intended to pay rent to the landlord soon, however, a settlement agreement was not possible as the agent for the landlord wanted to proceed with a request for an order of possession and a monetary order.

The landlord provided documentary evidence that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") was served by posting to the door on April 11, 2012 with an effective date of April 21, 2012 which corrects under the *Act* to April 24, 2012. The tenant testified that he received the Notice and did not dispute the Notice. Given the above, I find the tenant was served in accordance with the *Act*.

The landlord provided a copy of the written tenancy agreement; the 10 Day Notice; proof of service; a registered mail receipt; and a ledger as evidence.

### Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of Possession** - The tenant failed to pay the rent or dispute the Notice within 5 days after receiving the Notice. Therefore, the tenant is conclusively presumed under section 46 of the *Act* to have accepted that the tenancy ended on the corrected effective date of the Notice. Accordingly, I grant the landlord's request for an order of possession.

**Claim for unpaid rent** - The landlord claims for unpaid rent in the amount of \$8,787.00 as described above. Pursuant to section 26 of the *Act* the tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, 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 the landlord a monetary claim of **\$8,787.00** for rent owed.

The landlord has succeeded with his application; therefore I award recovery of the **\$100.00** filing fee. The total monetary amount of **\$8,887.00** consists of \$8,787.00 in unpaid rent and recovery of the \$100.00 filing fee.

The security deposit of \$997.00 was paid on September 1, 1995. The interest to date is \$178.95 for a total security deposit with interest of \$1,175.95.

Conclusion

I find that the landlord has established a total monetary claim of **\$8,887.00**. I order that the landlord retain the security deposit and interest of \$1,175.95 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$7,711.05**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 14, 2012

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Residential Tenancy Branch