



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on June 04, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant is deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

### Background and Evidence

This month to month tenancy started on January 01, 2006. Rent for this unit is \$1,000.00 per month and is due on the first of each month.

The landlord testifies that the tenant owes a balance of rent from September, 2011 to June, 2012 of \$10,000.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on March 27, 2012. This was posted to the tenant's door on April 08, 2012 and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on April 08, 2012. The landlord testifies that at the time the 10 Day Notice was issued to the tenant the landlord had stated that the tenant owed \$15,000.00. However the landlord testifies that he cannot proof the additional sums and by the tenants own written documentation the tenant agrees he has not paid rent since September, 2011. Therefore, the landlord has only filled a claim to recover unpaid rent from September, 2011. The tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice and the tenant then failed to pay rent for June, 2012.

The landlord seeks a Monetary Order to recover the outstanding rent and filing fee paid for this proceeding and seeks an Order of Possession to take effect as soon as possible.

### Analysis

Section 26 of the Act states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find that the landlord has established that the tenant has failed to pay rent from September, 2011 to June, 2012 and consequently the landlord will receive a Monetary Order to recover the sum of **\$10,000.00** pursuant to s.67 of the *Act*.

As the landlord has been successful in this matter, they are also entitled to recover the **\$100.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a monetary order for the balance owing of **\$10,100.00**

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting and therefore the amended date of the Notice would be April 23, 2012 pursuant to s. 53 of the *Act*. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$10,100.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme 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: June 20, 2012.

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Residential Tenancy Branch