



# 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 hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on June 18, 2012 the tenant did not appear. I find that the tenant has been duly served in accordance with the Act.

The landlord's agent gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Is the landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on March 15, 2011. Fair market rent for the rental unit was determined to be \$1,050.00 at the start of tenancy. The tenant's portion of rent payable was based on 30% of gross income if eligible for rent subsidy. The tenant paid a security deposit of \$525.00. Filed in evidence is a copy of the tenancy agreement.

The landlord's agent testified in order for the tenant to continue to receive subsidy housing; the tenant must complete an application to support their income. The landlord's agent stated the tenant was claiming no income, however, the bank statements provided by the tenant showed the tenant received \$17,643.23 in unexplained income and the tenant has failed to provide any explanation on where this income has come from.

The landlord's agent testified the tenant was served with notice that she would be responsible to pay the full amount of rent in the amount of \$1,050.00, commencing

December 1, 2012, if the tenant did not comply with their requests for financial disclosure. Filed in evidence are letters dated January 10, 2012 and January 26, 2012.

The landlord's agent testified it was determined based on the unexplained deposits that the tenant had a monthly income of \$3,529.05. As a result, the tenants rent contribution increased to \$1,161.00 per month. The landlord stated clause 18 of the tenancy agreement states the tenant is responsible for the full amount of rent as stated above (\$1,050.00) or the tenant rent contribution (30 % of gross income) if eligible for a rent subsidy whichever is higher. Therefore, the tenant rent from December 1, 2011, to July 1, 2012, increased from \$1,050.00 to \$1,161.00 as that is the higher of the two amounts.

The landlord's agent testified the tenant only paid \$1,575.00 towards rent since December 1, 2011, and the tenant has paid no rent for June 2012 and July 2012.

The landlord's agent testified the tenant was served with a notice to end tenancy for non-payment of rent on June 5, 2012, by posting to the door. The notice informed the tenant that they must move out of the rental unit by June 18, 2012, if they did not dispute the notice or pay all rent due.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the landlord is entitled to an order of possession effective **two days** after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

In this case, the tenant was served notice that commencing December 1, 2011, the tenant would be responsible to pay the predetermined fair market rent in the amount of \$1,050.00 as specified in the tenancy agreement.

On February 17, 2012, the tenant was served an additional letter, which stated based on 30% of the tenant's gross income that the tenants rent contribution would be increasing to \$1,161.00, based on the unexplained income. However, the tenants rent contribution calculation does not impact the tenancy agreement as \$1,050.00 is the maximum rent the tenant is responsible to pay should the tenants rent contribution exceed that amount. Any rent adjustment on the fair market value may be adjusted from time to time if that adjustment complies with section 42 of the Act.

It would be an unconscionable term in a tenancy agreement which would require a tenant to pay rent solely based on 30% of their gross income and not take into consideration the fair market value provided at the start of tenancy.

The tenant has paid a total of \$1,575.00 towards rent. The tenant owed from December 1, 2011, to July 1, 2012, the sum of \$8,400.00 in rent, based on the fair market value of \$1,050.00 determined at the start of tenancy. Therefore, I find the balance owing in unpaid rent is \$6,825.00.

I find that the landlord has established a total monetary claim of \$6,925.00 comprised of unpaid rent and the \$100.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$525.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$6,400.00.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and may keep the security deposit and interest in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: July 09, 2012.

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Residential Tenancy Branch