



# Dispute Resolution Services

Page: 1

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 the security and or pet 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 Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. 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. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The following facts are not in dispute:

- The parties entered into a fixed term tenancy that began on September 1, 2011 and is set to end on August 31, 2012 for the monthly rent of \$925.00 which is due on the first of each month; and
- On August 24, 2011 the Tenants paid a security deposit of \$462.50;
- The Tenants were served a 10 Day Notice to end tenancy on July 3, 2012 when it was posted to the Tenants' door; and
- The Tenants have an outstanding balance due of \$1,231.50 which includes \$306.50 owing from July 1, 2012 plus \$925.00 which was due August 1, 2012.

The Tenant confirmed that rent remains unpaid due to her current personal financial difficulties. She stated that she has been trying to get assistance however it is still in progress.

The Landlord stated that she wished to proceed with their request for an Order of Possession and a Monetary Order for the unpaid rent plus the \$25.00 late payment fee for July and August as provided in section 12 of their tenancy agreement.

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenants still have an outstanding balance due from July of \$306.50 and have failed to pay the \$925.00 which was due August 1, 2012. Therefore, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **July 16, 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.

The Landlord claimed unpaid rent of \$306.50 that was due July 1, 2012, in accordance with the tenancy agreement. Section 26 of the Act stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement. Therefore I approve the Landlord's claim for unpaid rent for July 2012 of **\$306.50**.

As noted above this tenancy ended **July 16, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for August 2012, as the Tenant remains in the unit.

The Landlord will not regain possession of the unit until after service of the Order of Possession and has the obligation to attempt to re-rent the unit as soon as possible. Therefore I award the Landlord **\$462.50** (1/2 of \$925.00) for use and occupancy of the unit up to **August 15, 2012**.

The evidence supports that the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00 when rent is not paid on the first of each month, in accordance with section 7 of the Residential Tenancy Regulation.

The Landlord has applied for late payment fees for July and August 2012 however this tenancy ended July 16, 2012 in accordance with the 10 Day Notice. The tenancy agreement is no longer in effect after the tenancy ends therefore the Landlord is not entitled to late payment charges for occupancy after the end of the tenancy. Accordingly I award the Landlord late payment charges for July 2012 in the amount of **\$25.00**.

The Landlord has 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 July 2012	\$306.50
Use and Occupancy for August 2012	462.50
Late payment fee for July 2012	25.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$ 844.00</b>
<b>LESS:</b> Security Deposit \$462.50 + Interest 0.00	<u>-462.50</u>
<b>Offset amount due to Landlord</b>	<b><u>\$ 381.50</u></b>

### Conclusion

The Landlord has been awarded an Order of Possession effective **two days upon service**. This Order is legally binding and must be served upon the Tenants.

The Landlord has been issued a Monetary Order in the amount of **\$381.50**. This Order is legally binding and must be served upon the Tenants.

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: August 03, 2012.

---

Residential Tenancy Branch