



# 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 was scheduled to deal with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, a late fee and NSF fee, loss of rent, and liquidated damages. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the hearing the parties indicated a willingness to resolve this dispute by mutual agreement. I have recorded the agreement by way of this decision and the Orders that accompany it.

### Issue(s) to be Decided

1. What are the terms of the mutual agreement?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order?

### Background and Evidence

The one year fixed term tenancy commenced January 1, 2012. The tenant paid a \$637.50 security deposit and is required to pay rent of \$1,300.00 on the 1<sup>st</sup> day of every month. The tenancy agreement provides for a liquidated damages clause in the amount of \$637.50. Further, the landlord may charge fees for late payment and payments returned NSF in the amount of \$25.00 each.

The tenant's rent payment for July 2012 was returned for insufficient funds. The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on July 9, 2012 and posted it on the tenant's door.

Contrary to the requirements of the Act, the Notice includes the late fee and NSF fee in the space provided for the amount of the rental arrears. The Notice also provides an

incorrect effective date of July 11, 2012. However, the tenant did not file to dispute the Notice.

The tenant has since paid the landlord \$450.00 towards the rental arrears approximately two weeks ago and a further \$350.00 today. In addition, the landlord withdrew funds for August 2012 rent from the tenant's bank account.

The tenant was of the understanding that if she were to come forward with the balance of the rental arrears the tenancy was to continue. Both parties were in agreement that this has been an otherwise successful tenancy.

Upon discussions with both parties I facilitated the following mutual agreement:

1. The tenant shall pay the landlord a total of \$600.00 for the balance of the rental arrears; late fee; NSF fee; and filing fee no later than August 24, 2012.
2. Should the tenant fail to fulfill term no. 1 the landlord may serve and enforce an Order of Possession effective two (2) days after service and a Monetary Order in the amount of \$600.00.
3. If the tenant fulfills term no. 1 the tenancy shall continue and the Orders described in term no. 2 become void and unenforceable.

### Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record a settlement agreement in the form of a decision or order.

I have accepted the settlement agreement reached by the parties during this hearing and make the terms an Order to be binding upon both parties.

I have provided the landlord with an Order of Possession effective two (2) days after service and a Monetary Order in the amount of \$600.00 to serve and enforce in accordance with the settlement agreement recorded in this decision.

As the tenancy remains in effect as of the date of this decision the landlord's request for liquidated damages is dismissed with leave to reapply. Further, the security deposit remains in trust to be disposed of in accordance with the Act.

### Conclusion

This dispute has been resolved by way of a mutual agreement recorded in this decision. The landlord has been provided with an Order of Possession and Monetary Order that may be served and enforced conditional upon the terms of the mutual agreement.

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 15, 2012.

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Residential Tenancy Branch