



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – CNR

For the landlord – OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call in repose to both parties' applications for dispute resolution. The tenant applied to cancel a Notice to End Tenancy. The landlord applied for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The hearing went ahead as scheduled however the tenant failed to dial into the conference call during call. Therefore, no hearing took place regarding the tenant's application as the tenant has failed to present the merits of their application and the tenant's application is dismissed without leave to reapply.

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 July 24, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The agents for the landlord appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(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?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on March 01, 2010. Rent for this unit is \$660.00 per month which includes \$10.00 for laundry and is due on the 1st of each month. The tenant paid a security deposit of \$337.50 on February 19, 2010.

The landlord's agent testifies that the tenant failed to pay rent for July, 2012. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on July 06, 2012. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states that the tenant owes rent for July, 2012 of \$660.00. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on July 16, 2012. The tenant did not pay the outstanding rent and although the tenant has disputed the Notice within five days the tenants has not appeared at the hearing today to present the merits of his application. Since that time the tenant has not paid rent for August, 2012 to the amount of \$660.00. The landlord's agent has requested to amend the application to include unpaid rent for August, 2012 as the tenant continues to reside in the unit. The total amount of unpaid rent is now \$1,320.00.

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The landlord has provided a copy of the tenancy agreement, a copy of the 10 Day Notice to End Tenancy and the rent ledger in evidence.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

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.*

Consequently I find that the tenant has failed to pay rent for July, 2012 and the landlord is entitled to recover these rent arrears to the sum of \$660.00. I have allowed the landlord to amend his application to include some unpaid rent for August, 2012 as the tenant continues to live in the rental unit and would be aware that rent is due on the first day of each month. However I have limited this claim to \$330.00 as the landlord may still be able to re-rent the unit for a period of time in August, 2012. Consequently, the landlord will receive a monetary award to the sum of **\$990.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$337.50** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$990.00
Less Security Deposit	(-\$337.50)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$702.50</b>

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. The notice is deemed to have been received by the tenant on July 09, 2012 and the effective date of the notice is amended to July 19, 2012 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 pursuant to s. 55 of the *Act*.

### 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 **\$702.50**. 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 landlord 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.

The tenant's application is dismissed without leave to reapply.

As the applicant did not appear at the hearing today; I Order that the applicant pay the filing fee of **\$50.00** that was previously waived to the director of the Residential Tenancy Office.

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.

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Residential Tenancy Branch