



# 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 repose to the landlord's 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 August 09, 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 June 01, 2012 although the tenant was allowed to move into the unit on May 22, 2012. There was a verbal agreement between the parties for the tenant to rent this unit at a month rent of \$1,300.00. Rent is due on the first of each month.

The landlord testifies that the tenant failed to pay rent for June, 2012. The landlord had served the tenant with a One Month Notice to End Tenancy on June 01, 2012. This Notice was later deemed to be invalid at a previous hearing as the landlord had not filled in the correct amount of rent owed and the landlord had served the Notice to the tenant on the day of the month that rent was due. The landlord testifies the tenant failed to pay rent for July, 2012 and the landlord served the tenant with another 10 Day Notice to End the Tenancy for unpaid rent on July 13, 2012. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on July 31, 2012. The tenants did not pay the outstanding rent or dispute the Notice within five days. The landlord has requested an amendment to his application to include unpaid rent for August, 2012 as the tenant has also failed to pay rent this month. The total amount of outstanding rent is now \$3,900.00.

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.*

The tenant has not appeared at the hearing to dispute the landlords evidence consequently I find the landlord is entitled to recover rent arrears for June, July and August 2012 to the sum of **\$3,900.00** pursuant to s.67 of the *Act*.

I have allowed the landlord to amend his application to include unpaid rent for August as the tenant has continued to reside in the rental unit and would be aware that rent was due on August 01, 2012.

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*.

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 tenants' door it was deemed served three days after posting. 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 **\$3,950.00**. 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: August 29, 2012.

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Residential Tenancy Branch