



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR 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, 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 Tenant for this application.

The Landlord appeared at the teleconference hearing and gave affirmed testimony that the Tenant was personally served with the notice of dispute resolution hearing on August 23, 2012 at 5:00 p.m. and the Tenant signed the proof of service form acknowledging receipt of the hearing documents.

Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding so I continued in the Tenant's absence.

### Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

### Background and Evidence

The parties affirmed that they entered into a written fixed term tenancy agreement that began on July 1, 2012 and is set to switch to a month to month tenancy agreement after June 30, 2013. Rent is payable on the first of each month in the amount of \$775.00 and on July 1, 2012 the Tenant paid \$387.50 as the security deposit.

The Landlord submitted evidence which included, among other things, copies of: the 10 Day Notice, the tenancy agreement, a tenant ledger, and proof of service documents.

The Landlord confirmed that when August 1, 2012 rent was not paid in full they served a 10 Day Notice to the Tenant by posting it to the Tenant's door on August 10, 2012 which included a \$20.00 late payment fee and a \$25.00 NSF fee. As of August 10, 2012 the Tenant owed \$185.00. The Tenant also failed to pay the full amount due for September 2012 rent on time and has since made payments which total \$1,012.50 for use and occupancy as follows:

September 1, 2012: \$240.00  
September 1, 2012: \$387.50  
September 4, 2012: \$237.50  
September 7, 2012: \$147.50

The Landlord's agent requested to proceed with their application for an Order of Possession and a Monetary Order to include the late fee for September and the filing fee for this application.

### Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

**Order of Possession** - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act* that the Tenant failed to pay the rent **in full** within 5 days after receiving this notice. The Notice is deemed to have been received by the Tenant on August 13, 2012, three days after it was posted to the Tenant's door, and the effective date is **August 23, 2012**, in accordance with Section 90 of the *Act*.

The Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, **August 23, 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.

**Claim for unpaid rent** - The Landlord claims for unpaid rent, NSF and late fees for August and September 2012 rent and late fees, pursuant to section 26 of the *Act* which states a tenant must pay rent when it is due in accordance with the tenancy agreement.

The evidence supports the August rent, NSF, and late fees have been paid by the Tenant September 1, 2012 and September occupancy of \$775.00 has been paid in full by September 7, 2012, leaving a \$52.50 credit balance (\$1012.50 payments - \$185.00 August rent - \$775.00 September occupancy). Therefore the unpaid rent has been paid in full and the Landlord's monetary claim for August is now satisfied.

**Loss of rent** – As noted above this tenancy ended **August 23, 2012**, in accordance with the 10 Day Notice therefore I find the Landlord applied for loss of rent for September 1, 2012 given that the tenancy ended and the Tenant is still occupying the unit.

Based on the aforementioned I find that the Tenant paid the \$775.00 for September "use and occupancy" therefore the Landlord's claim for September 2012 loss of rent has been satisfied.

**Late Payment Fees.** The Landlord is seeking \$20.00 for late payment fees for September 2012 in accordance with section 3 (a) of the tenancy agreement. This tenancy ended August 23, 2012, therefore the Landlord may not make a claim for late payment fees for September 2012, as this tenancy was no longer in effect at that time. Therefore I dismiss the Landlord's claim of \$20.00 for September 2012 late fees.

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

### Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Tenant's account current has a credit balance of \$52.50, therefore, the Landlord may recover the \$50.00 filing fee from the Tenant's account.

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: September 27, 2012.

---

Residential Tenancy Branch