



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### 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 a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

This fixed term tenancy started on April 15, 2012 and was due to expire on April 30, 2013. Rent for this unit is \$720.00 per month and is due on the first of each month. A written tenancy agreement has been provided by the landlord in evidence.

The landlord testifies that the tenant failed to pay rent owed up to September, 2012 of \$1,664.00 which included a late fee. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on September 04, 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 September 14, 2012. The tenant did not pay all the outstanding rent or dispute the Notice within five days. The tenant did pay \$350.00 on September 07, 2012 and \$1,000.00 on September 21, 2012. These payments were accepted for use and occupancy and leave an outstanding balance of \$314.00. The tenant failed to pay rent for October, 2012 of \$720.00. The total amount of outstanding rent is now \$1,034.00. The landlord states that as the tenant is making an attempt to catch up with the rent arrears the landlord will not enforce any Orders and they have made an agreement that the tenant will pay the arrears as soon as the tenant gets his EI payment. However, if the tenant defaults on this agreement the landlord will enforce any Orders received.

The landlord testifies that there is a term in the tenancy agreement which states the landlord will apply a fee of \$20.00 for late payments of rent. The landlord has already applied this fee for September, 2012 and seeks to recover it for October, 2012.

The landlord seeks a Monetary Order to recover the outstanding rent, late fee and filing fee paid for this proceeding and seeks an Order of Possession to take effect on October 31, 2012. The landlord amended their claim as they had also claimed for November's rent and late fee.

The tenant does not dispute the landlords claim for unpaid rent and Order of Possession. The tenant testifies he will pay the landlord as soon as his EI payments come through.

### 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.*

Both parties agree that rent is due on the first day of each month and the tenant agrees that he has not paid all the rent for September and October, 2012. Consequently, I find that the landlord is entitled to recover rent arrears of **\$1,034.00** pursuant to s. 67 of the *Act*.

The landlord also seeks to recover **\$20.00** in late fees for October, 2012. The landlord has provided a copy of the tenancy agreement to show that the tenant is aware that this charge will be made if rent is late. Therefore, the landlord is entitled to recover late fees charged.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *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 posted on the tenants door it was deemed served three days later and therefore the amended date of the Notice would be September 17, 2012 pursuant to s. 53 of the *Act*. The tenant did not pay all 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 amended effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the landlord has been successful with their amended claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,154.00**. 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 landlord effective **on October 31, 2012**. 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: October 25, 2012.

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Residential Tenancy Branch