



# 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 convened by way of conference call in repose to the landlords application 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 tenants security deposit; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement.

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 September 24, 2012. Mail receipt numbers were provided by the landlord in 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 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.

### 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

The landlord testifies that this month to month tenancy started on October 01, 2011. Rent for this unit is \$750.00 per month due on the first day of each month in advance. The tenant paid a security deposit of \$375.00 on October 01, 2011.

The landlord testifies that the tenant failed to pay rent for July, 2012. The landlord testifies that they gave the tenant some time to pay the rent however on August 01, 2012 the tenant only paid \$750.00. The landlord states that this was applied to July's rent and the tenant still owed \$750.00 for August, 2012. The landlord testifies that the tenant failed to pay rent for September of \$750.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on September 05, 2012. This was posted to the tenant's door and was deemed to have been served three days after posting. This Notice stated that the tenant owed rent of \$1,500.00.00 due on September 01, 2012. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on September 15, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for October, 2012 to the amount of \$750.00. The total amount of unpaid rent is now \$2,250.00.

The landlord has applied to retain the tenants' security deposit of \$375.00 in partial satisfaction of the rent arrears and seeks a Monetary Order for the balance of unpaid rent. 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 and a copy of the 10 Day Notice to End Tenancy 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 from the undisputed testimony before me I find that the tenant has failed to pay rent for August, September and October, 2012 and the landlord is entitled to recover rent arrears for these months. The landlord will receive a monetary award to the sum of **\$2,250.00** 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 **\$375.00** 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	\$2,250.00
Less Security Deposit	(-\$375.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$1,925.00</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 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. As the Notice was deemed served three days after it was posted to the tenant's door the effective date of the Notice has been amended to September 18, 2012 pursuant to s. 53 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 **\$1,925.00** pursuant to s. 67 and 72(1) of the *Act*. 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 pursuant to s. 55 of the *Act*. 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 29, 2012.

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Residential Tenancy Branch