



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent; Monetary Order for unpaid rent; and, authority to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as proof of service of the hearing documents. The landlord testified the registered mail was addressed to the tenant at the rental unit but that it was returned as unclaimed. The landlord confirmed the tenant continues to occupy the rental unit. I was satisfied the tenant was sufficiently served with notice of these proceedings. Accordingly, I continued to hear from the landlord without the tenant present.

At the commencement of the hearing the landlord stated the tenant has since satisfied the rental arrears and withdrew the request for a Monetary Order.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The tenancy commenced August 2008 and the tenant paid a \$270.00 security deposit. The tenant is required to pay rent of \$425.00 including cable services on the 1<sup>st</sup> day of every month. The tenant's paid rent for August 2012 by way of cheque dated August 28, 2012. The tenant then failed to pay rent for September 2012 when due. The landlord issued a 10 Day notice to End Tenancy for Unpaid Rent (the Notice) on September 6, 2012 and placed it in the tenant's mailbox on September 6, 2012. The Notice indicates \$425.00 was outstanding as of September 1, 2012 and has a stated effective date of September 16, 2012.

The tenant's rent cheque for August 2012 was then returned for insufficient funds.

The tenant presented the landlord with a cheque dated September 27, 2012 in the amount of \$1,275.00, the equivalent of three month's rent. The landlord issued a receipt for "use and occupancy only" and applied the payments to the outstanding rent for August 2012, September 2012 and for use and occupancy for October 2012.

The landlord is requested an Order of Possession effective November 30, 2012 in order to provide the tenant sufficient time to find alternative accommodation.

Provided as evidence for this proceeding were copies of: the tenancy agreement; the 10 Day Notice; the returned cheque dated August 28, 2012; the cheque dated September 27, 2012; and, the receipt issued for use and occupancy on October 2, 2012.

### Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Since the Notice was placed in the tenant's mailbox on September 6, 2012 it is deemed to be received by the tenant three days later pursuant to section 90 of the Act.

Therefore, the tenant had until September 14, 2012 to pay the outstanding rent or file to dispute the Notice.

Paying the outstanding rent September 27, 2012 is insufficient to nullify the Notice. Further, by issuing a receipt for "use and occupancy only" I am satisfied the landlord did not reinstate the tenancy. Therefore, I find the tenancy has ended and the landlord is entitled to regain possession of the rental unit.

Provided with this decision is an Order of Possession effective November 30, 2012 as requested by the landlord.

I award the filing fee to the landlord. Accordingly, I authorize the landlord to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

### Conclusion

The landlord has been provided an Order of Possession effective November 30, 2012. The landlord has been authorized to deduct \$50.00 from the tenant's security deposit to recover the filing fee paid for this application.

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 31, 2012.

---

Residential Tenancy Branch