



# 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 an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed for compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

An agent for the landlord company attended the conference call hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing to the tenant and to the Residential Tenancy Branch. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on October 11, 2012, the tenant did not attend. The landlord's agent gave oral testimony of having sent the documents on that date and in that manner, and provided a tracking number assigned to the registered mail by Canada Post, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes prior to taking any testimony, and the only participant who attended the conference call hearing was the landlord's agent.

The landlord also stated that some evidence provided to the tenant was not retained by the Residential Tenancy Branch which was intended to be evidence to support the landlord's claim. The landlord was provided with an opportunity to provide to me all evidence that was provided to the tenant. The landlord's agent faxed that evidence to me after the hearing had concluded. That evidence includes a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and tracking information from Canada Post with respect to service of documents and evidence upon the tenant.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?  
Has the landlord established a monetary claim for unpaid rent or utilities?  
Has the landlord established a monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began 8 or 9 years ago, but was unable to provide a date, and the tenant still resides in the rental unit. Rent in the amount of \$982.64 is payable in advance on the 1<sup>st</sup> day of each month. The landlord's agent was unable to testify as to any amount of security deposit or pet damage deposit may have been collected from the tenant, or whether or not a move-in condition inspection report was completed at the outset of the tenancy.

The landlord's agent further testified that the tenant failed to pay rent when it was due for the month of September, 2012. The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit on October 2, 2012. The notice is dated October 2, 2012 and contains an expected date of vacancy of October 15, 2012 for failure to pay the rental amount of \$982.64 that was due on September 1, 2012. The landlord's agent witnessed the tenant take the 2-page notice off the door of the rental unit and the parties had a conversation.

The landlord's agent further testified that the tenant has been repeatedly late with the rent and notices to end tenancy have been served but the tenant has always paid the rent in full within 5 days, making the notices ineffective. The tenant paid rent on time for the months of October and November, 2012 for which the landlord issued receipts showing that the money was being accepted for Use and Occupancy only so as not to reinstate the tenancy, but copies were not provided for this hearing.

The landlord has also provided copies of 2 cheques written by the tenant for rental payments and both are marked "Item Dishonoured." The first is dated October 1, 2012 for September, 2012 rent, and the other is dated August 1, 2011.

### Analysis

The *Residential Tenancy Act* states that a landlord may serve a tenant with a notice to end tenancy for unpaid rent on any day after the date rent is payable under the tenancy agreement. The tenant has 5 days to pay the rent in full from the date the tenant is served or deemed to have been served with the notice, or dispute the notice. If the tenant does neither within that 5 day period, the tenant is conclusively presumed to

have accepted that the tenancy ends on the effective date of the notice and must move out by that date.

In this case, I am satisfied that the tenant was served with the notice to end tenancy on October 2, 2012 by posting it to the door of the rental unit on that date. Even though the landlord witnessed the tenant take the notice off the door of the rental unit, the landlord's agent did not personally hand it to the tenant and therefore, the notice is deemed to have been served 3 days after posting it, or on October 5, 2012. The tenant has not disputed the notice and has not paid the rent in full, and therefore, I find that the landlord is entitled to an Order of Possession and a monetary order for the unpaid rent.

I am not satisfied that the landlord has issued receipts for October and November, 2012 that are clearly marked, "For Use and Occupancy Only," however, I do find that the conclusive presumption exists, and I am satisfied that the landlord is owed the unpaid rent for September, 2012. Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,032.64.

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: November 15, 2012.

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Residential Tenancy Branch