



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started on August 1, 2010. Rent of \$700.00 is payable monthly and at the onset of the tenancy the Landlord collected \$350.00 as a security deposit. On August 27, 2012, the Tenant received a 10 day notice to end the tenancy for unpaid rent (the “Notice”) served the Tenant. The Notice indicates that the Tenant owes \$1,172.34 in rental that was due on January 1, 2012.

The Landlord states that the Tenant owed the arrears indicated on the Notice as arrears that accrued during 2011. The Landlord states that the Tenant paid \$200.00 on August

29, 2012 towards those arrears and that the amount outstanding is now \$912.34. The Landlord states that the Tenant has paid the rent as due between January and August 2012 inclusive and no arrears are currently owing other than November 2012 rent which the Landlord states was refused by the Landlord. The Landlord agrees that he will accept this rent for use and occupancy only until this claim is decided. The Landlord states that the Tenant was not given receipts for the period January to August 2012 and that the Landlord did not tell the Tenant at any time during this period that the tenancy would end for the failure to pay the arrears. The Landlord states that he did provide a receipt for October 2012 rent which includes the notation "for occupancy only".

The Tenant states that the amount claimed by the Landlord is wrong and that the Tenant only owes approximately \$300.00 in rental arrears. The Tenant states that he paid \$650.00 toward the arrears during 2012 in the form of two payments of \$400.00 and by purchasing a stove for the unit. The Tenant states that stove stopped working and the Landlord refused to act in providing the Tenant with a new stove and that as he has 4 children to feed, he could not wait for the Landlord to replace the stove. The Tenant states that he did not file an application to dispute the Notice as he paid \$200.00 towards the arrears as soon as he received the Notice and thought that everything was okay and that the tenancy would continue.

The Landlord states that the Tenant did not have permission to replace the stove and that all accounting in relation to the arrears was provided to the Tenant in the form of statements. It is noted that this accounting evidence was not provided for this Hearing.

Neither Party provided any evidence in relation to a Notice to End Tenancy for Cause.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two

things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Given that the Tenant did not dispute the Notice and accepting the undisputed evidence that following the receipt of the Notice the Tenant did not pay the full amount of arrears within 5 days of receipt of the Notice, I find that the Tenant has been conclusively presumed to have accepted that the tenancy ends. I find that the Landlord is therefore entitled to an Order of Possession. Considering that the Tenant attempted to pay rent for November 2012 but was refused and considering that the Landlord will accept November 2012 rent for use and occupancy only, I make the Order of Possession effective 1:00 p.m. on November 30, 2012.

As the Tenant denies the amount of unpaid arrears claimed by the Landlord and claims that only \$300.00 is outstanding, and considering that the Landlord did not provide accounting evidence to support the monetary amount claimed, I find that the evidence in relation to the amount of outstanding arrears is inconclusive and that the Landlord has not substantiated the claim for unpaid arrears. I therefore dismiss this part of the application.

As no evidence was provided by the Landlord in relation to a Notice to End Tenancy for cause whether by error or otherwise, I am unable to make any determination in relation to this notice and I therefore dismiss this part of the Landlord's application.

As the Landlord has been only partially successful with its application, I find that the Landlord is entitled to recover only half of the \$50.00 filing fee. I therefore order the Landlord to deduct **\$25.00** from the security deposit in full satisfaction of the claim.

### Conclusion

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on November 30, 2012.

**I order** that the Landlord deduct \$25.00 from the security **deposit** and interest of \$350.00 in full satisfaction of the claim.

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 07, 2012.

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Residential Tenancy Branch