



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The landlord named two tenants in filing this application and provided registered mail receipts, including tracking numbers, showing the landlord sent a hearing package to each named respondent on October 25, 2012 at the rental unit address. I was satisfied the landlord sufficiently served the named respondents in a manner that complies with the requirements of the Act and I proceeded to hear from the landlord in the absence of the named respondents.

### Preliminary and Procedural Matters

During the hearing I noted that there was only one tenant signature on the tenancy agreement and the Notice of Rent Increase named only one tenant. The landlord explained that the male tenant actually signed the tenancy agreement and his wife had subsequently initialled the first page of the tenancy agreement. The landlord also explained that on the tenancy agreement the male tenant's first name was incorrectly identified in the space provided to name the tenants but that it correctly appears in the space provided to name adult occupants. Further, as the landlord's previous attempt to obtain an Order of Possession for unpaid rent against the male tenant was unsuccessful in a Direct Request proceeding, the landlord named both the male tenant and his wife as tenants in serving another 10 Day Notice and filing this Application under the participatory hearing process.

Upon review of the decision issued under the Direct Request procedure (file no. 798834) I note the landlord's request for an Order of Possession based was upon a 10 Day Notice issued in September 2012 was dismissed; however, the landlord's monetary claims were dismissed with leave.

As the landlord is now seeking an Order of Possession based upon a different 10 Day Notice issued in October 2012 I find the matter before me has not previously been decided upon and I will consider the landlord's entitlement to an Order of Possession based upon a 10 Day Notice issued in October 2012.

As the respondents did not appear at the participatory hearing, I base my findings with respect to the identity of the tenant upon the documentary evidence supplied by the landlord and the landlord's oral submissions.

Upon review of the tenancy agreement presented to me, including the Addendum that was initialled in several places by the male tenant, the Notice of Rent Increase issued to the male tenant, the landlord's ledger that identifies the only tenant as the male tenant, I find the male tenant is the only tenant that signed the tenancy agreement and is the only tenant party to or subject to the terms of the tenancy agreement. I do not consider the tenant's wife's initials that were subsequently added to the first page of the tenancy agreement sufficient to find the tenant's wife was a party to the tenancy agreement when it formed. Nor do I consider the addition of her initials alone to be sufficient to consider the tenancy agreement amended to add her as a tenant. Therefore, I amend the Application to name the male tenant only.

#### Issue(s) to be Decided

1. Has the landlord established an entitlement to an Order of Possession for unpaid rent?
2. Has the landlord established an entitlement to a Monetary Order for unpaid rent, late fees and NSF fees, as claimed?

#### Background and Evidence

The tenancy commenced in August 2010 and the tenant paid a \$700.00 security deposit. Under the written tenancy agreement the tenant is required to pay rent of \$1,400.00 on the 1<sup>st</sup> of every month. The rent was increased to \$1,425.00 by way of a Notice of Rent Increase that took effect September 1, 2011.

I noted that on the landlord's application the landlord indicated the rent was \$1,450.00 per month. The landlord explained that the tenant approached the landlord to inform the landlord that he could not pay rent on the 1<sup>st</sup> of every month. The parties agreed that the tenant would add a \$25.00 late fee to each month's rent payment.

On October 15, 2012 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on the tenant's door and it was removed from the door by the tenant a few minutes later. The Notice indicates the tenant failed to pay \$3,032.50 as of October 1, 2012 and has a stated effective date of October 25, 2012.

The landlord explained that the amount that appears on the Notice is comprised of unpaid rent for September and October 2012 including late fees, plus two NSF charges of \$42.50 each for the two cheques that were returned by the tenant's bank, plus another two late fees of \$25.00 each that were added in error.

The tenant came to the landlord's office November 2, 2012 and paid \$1,450.00 for which he was given a receipt for use and occupancy only for the month of November 2012.

As documentary evidence the landlord provided copies of: the tenancy agreement, including Addendum, Notice of Rent Increase, the 10 Day Notice, Proof of Service of the 10 Day Notice, the tenant's ledger, receipt for the November 2, 2012 payment; and, registered mail receipts.

### 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.

I accept that the tenant was served with the Notice as required by the Act on October 15, 2012. Since the tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on October 25, 2012. I accept that the landlord accepted monies for use and occupancy for the month of November 2012 only and did not re-instate the tenancy. Therefore, I find the landlord entitled to regain possession of the rental unit effective November 30, 2012. Given the date of this decision I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Upon review of the tenancy agreement I accept that the landlord is entitled to charge the tenant late fees of \$25.00 and administrative charges of \$25.00 for NSF cheques and that these charges are compliant with the requirements of the Residential Tenancy Regulations. In addition, a landlord is entitled to recover the service fees charged to the landlord by their financial institution for returned cheques. However, I find the landlord did not provide sufficient evidence, such as the returned cheques or statements from the landlord's bank to verify the cheques were returned or the amounts charged to the landlord by their financial institution. Therefore, I find insufficient evidence to grant the landlord's request for two NSF fees of \$42.50 each.

Nevertheless, I am satisfied the tenant still owes the landlord for rent and late fees for the months of September and October 2012 and I grant those amounts to the landlord. I further award the filing fee to the landlord.

The landlord did not request retention of the security deposit with this Application and it remains in trust for the tenant, to be administered in accordance with the Act.

In light of the above I provide the landlord with a Monetary Order in the amount calculated as follows:

Unpaid rent and late fees (September and October 2012)	\$ 2,900.00
Filing fee	<u>50.00</u>
Monetary Order	\$ 2,950.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been provided a Monetary Order for unpaid rent and late fees for the months of September and October 2012, plus the filing fee, in the amount of \$2,950.00 to serve upon the tenant and enforce as necessary.

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 30, 2012.

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Residential Tenancy Branch