



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF, O

### 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 a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

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 October 04, 2012. Mail receipt numbers were provided in the landlord at the hearing. 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 a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The landlord testifies that this tenant was originally the roommate of the tenant for this unit. When that tenant moved out, this tenant paid rent to the landlord and a tenancy was established. The landlord attending the hearing testifies that his father was the landlord of this building and the landlords named on the application i.e. the landlords sons went to the Supreme Court to gain the power to take over their father's affairs. The landlord attending has provided the Supreme Court documents which declare that these landlords have the power to deal with these matters. Due to this the landlord attending is unsure when this tenancy started. The landlord testifies that rent for this unit is \$950.00 per month and is due on the 1st of each month.

The landlord testifies that the tenant failed to pay all the rent for September, 2012. The tenant paid \$480.00 and the landlord issued a 10 Day Notice to End Tenancy for unpaid rent of \$470.00 on September 21, 2012. This was served to the tenant in person. This Notice informs the tenant that he owes \$470.00. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on October 05, 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 \$950.00 and has failed to pay rent for November, 2012. The total amount of unpaid rent is now \$2,370.00.

The landlord testifies that although the tenant has not been seen at the unit for a few days it appears as if the tenant is still residing in the unit as belongings of the tenant remain in the unit. Therefore 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 Supreme Court Order allowing the landlords named on the application to handle the affairs of the landlord and a copy of the 10 Day Notice to End Tenancy.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

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 I find that the tenant has failed to pay rent for September, October and November, 2012 and the landlord is entitled to recover these rent arrears to the sum of **\$2,370.00**.

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 of **\$2,420.00**

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 and grant the landlord an order of possession pursuant to s. 55 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 **\$2,420.00**. 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. 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: November 06, 2012.

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Residential Tenancy Branch