



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### 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 an Order permitting the landlord to keep all or part of the tenants security deposit; 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 25, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. 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's agent 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 keep the security deposit?

### Background and Evidence

This fixed term tenancy started on June 01, 2012. Rent for this unit is \$1,600.00 per month. Rent is due on the first of each month. The tenant paid a security deposit of \$800.00 on May 28, 2012.

The landlord's agent testifies that the tenant failed to pay rent for September, 2012 of \$1,600.00 as the tenants rent check was returned NSF. The tenant failed to pay rent for October, 2012 of \$1,600.00 as the tenants Octobers rent cheque was also returned NSF. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on October 05, 2012. This was sent by registered mail on October 05, 2012 and was deemed to have been served five days after posting. This Notice states that the tenant owes rent of \$3,225.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 15, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has also failed to pay rent for November, 2012 of \$1,600.00. The total amount of outstanding rent is now \$4,800.00.

The landlord has applied for an NSF fee for Octobers rent cheque of \$25.00. The landlords have applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlords have also applied for an Order of Possession to take effect within two days of service.

### Analysis

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 am satisfied with the undisputed evidence before me that the tenant has failed to pay rent for September, October and November, 2012 and the landlord is entitled to recover rent arrears to the sum of **\$4,800.00** pursuant to s.67 of the *Act*.

The landlord has also applied for an NSF fee of \$25.00; I refer the landlord to s. 7 (1)(c) and s. 7(2) of the Residential Tenancy Regulations which states:

(1) A landlord may charge any of the following non-refundable fees:

(c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Consequently as there is no mention of the landlord charging this fee in the tenancy agreement, I find the landlord is not entitled to charge this fee to the tenant and this section of the landlords claim is dismissed.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$800.00** in partial payment of the rent arrears.

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 landlords will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$4,800.00
Less Security Deposit	(-\$800.00)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$4050.00</b>

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy pursuant to section 88 of the *Residential Tenancy Act*. The notice is deemed to have been received by the tenant on October 10, 2012 and the effective date of the notice is amended to October 20, 2012 pursuant to section 53 of the *Act*. The Notice states that the tenant has 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 section 55 of the *Act*.

#### Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,050.00**. 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 landlords 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 28, 2012.

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Residential Tenancy Branch