



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR OPC OPB MNR MNDC MNSD MND FF

### Preliminary Issues

Upon review of the Landlord's application for dispute resolution she advised that she wished to withdraw her request for an Order of Possession for breach of an agreement and her request for a monetary order for damage to the unit, with leave to reapply. Accordingly these two items were removed from the Landlords' claim.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain an Order of Possession for: unpaid rent or utilities; and for cause; and for a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep the security and or pet deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that she served the Tenant with copies of her application, evidence, and hearing documents by registered mail on November 16, 2012. The Landlord submitted a copy of the Canada Post tracking information which indicates the registered mail package was signed received on November 19, 2012. Based on the submissions of the Landlords I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act, and I continued in the Tenant's absence.

### Issue(s) to be Decided

1. Should the Landlords be awarded an Order of Possession?
2. Should the Landlords be issued a Monetary Order?

### Background and Evidence

The Landlords submitted 24 pages of documentary evidence which included, among other things, copies of: the tenancy agreement; Canada Post tracking information; 1 Month Notice to end tenancy for cause issued October 13, 2012; and a 10 Day Notice for unpaid rent issued September 9, 2012.

The parties entered into a month to month tenancy agreement that began on August 1, 2012. Rent is payable on the first of each month in the amount of \$720.00 and on August 1, 2012 the Tenant paid \$360.00 as the security deposit.

The Landlord advised that the Tenant paid her rent late in August 2012, and made partial payments in September totaling \$660.00 (\$260.00 on September 18, 2012 and \$400.00 on September 20, 2012). This left a balance owing of \$60.00 for September 2012. A 10 Day Notice to end tenancy was posted to the Tenant's door on September 9, 2012. When the Tenant failed to pay the October 1, 2012 rent the male Landlord, D.C., personally served the Tenant a 1 Month Notice for Cause, for repeated late payment of rent, on October 13, 2012. The Tenant has not made any payments towards October, November or December 2012 rents and remains in the rental unit.

The Landlord stated that they are seeking to recover possession of the unit as soon as possible and obtain a Monetary Order for the unpaid rent of \$2,220.00.

### Analysis

Upon review of the 10 Day Notice I find that it was not completed in accordance with the Act, as the Notice is not signed. Accordingly, I dismiss the Landlord's request for an Order of Possession for unpaid rent.

Upon review of the 1 Month Notice to end tenancy for cause I find the Notice was completed and served upon the Tenant in accordance with the Act.

When a tenant receives a 1 Month Notice to end tenancy for cause they have ten days to dispute the Notice. If they do not make application to dispute the Notice, then pursuant to section 47(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.

Section 53 of the Act stipulates that if a landlord gives notice to end tenancy effective on a date that does not comply with the Act, then the notice is deemed to be changed to the correct date.

Since the tenant did not dispute the 1 Month Notice I find the tenancy ended on **November 30, 2012**, the corrected effective date of the Notice. I further find the Landlords are entitled to regain possession of the rental unit and I grant them an Order of Possession.

Based upon the undisputed evidence before me, I find the Landlords are entitled to recover unpaid rent for the months of September 2012 of \$60.00 plus \$720.00 for each subsequent month of October and November 2012, for the total amount of **\$1,500.00**.

As noted above this tenancy ended **November 30, 2012**, in accordance with the 1 Month Notice. Therefore, I find the Landlord is seeking money for use and occupancy and loss of rent for the unit for December 2012.

In this case the Landlords will not regain possession of the unit until after service of the Order of Possession. Therefore I award the Landlord **\$720.00** for use and occupancy of the unit for December 2012.

The Landlords have been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent September October and November 2012	\$1,500.00
Use & occupancy & loss of rent for December 2012	720.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$2,270.00</b>
<b>LESS:</b> Security Deposit \$360.00 + Interest 0.00	<u>-360.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,910.00</u></b>

Conclusion

I HEREBY FIND the Landlords are entitled to an Order of Possession effective **Two days upon service to the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlords have been awarded a Monetary Order in the amount of **\$1,910.00**. This Order is legally binding and must be served upon the Tenant.

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: December 17, 2012.

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Residential Tenancy Branch