



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

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

The Resident Manager affirmed that he personally served the Tenant on November 19, 2012 at the rental unit with copies of their application for dispute resolution and the hearing documents. Based on the submissions of the Resident Manager I find the Tenant was served notice of this proceeding in accordance with Act so I proceeded with the hearing in her absence.

### Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be issued a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: a 10 Day Notice issued November 2, 2012; the tenancy agreement; and a notice of rent increase.

The parties entered into a fixed term tenancy agreement that began on December 1, 2006 for the monthly rent of \$890.00 and the tenancy switched to a month to month tenancy after November 30, 2007. Rent is currently payable on the first of each month in the amount of \$1,048.00 and on November 7, 2006, the Tenant paid \$445.00 as the security deposit.

The Landlord submitted that when the Tenant failed to pay her November 1, 2012 rent they served her with a 10 Day Notice to end tenancy on November 2, 2012 by posting it to her door in the presence of a witness. The Tenant continues to occupy the rental unit

and has not paid November or December 2012 rent. They are seeking an Order of Possession for as soon as possible.

The Resident Manager advised that the Tenant was previously served with a notice of rent increase which was to make her rent \$1,093.00 effective December 1, 2012. Therefore they are seeking a Monetary Order for November rent of \$1048.00 plus December rent of \$1,093.00.

### Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Landlords and corroborated by their evidence.

In this case the Tenant is deemed to have received the 10 Day Notice on November 5, 2012, three days after it was posted, and the effective date of the Notice is **November 15, 2012**, in accordance with section 90 of the Act. I accept the evidence before me that the Tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

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 I hereby grant the Landlord an Order of Possession.

The Landlord claimed unpaid rent of \$1,048.00 that was due November 1, 2012 in accordance with section 26 of the Act that stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the aforementioned, I find the Landlord has met the burden of proof and I award them unpaid rent for November 2012 of **\$1,048.00**.

As noted above this tenancy ended **November 15, 2012**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit and not rent for December 2012. The Landlord will not regain possession of the unit until after service of the Order of Possession. Therefore, I award the Landlord the increased rent amount for December 2012 as use and occupancy in the amount of **\$1,093.00**.

The evidence supports that the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00 when rent is not paid on the first of each month, in accordance with section 7 of the Residential Tenancy Regulation. Accordingly, I award the Landlord late payment fees for November 2012 in the amount of **\$25.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is 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 for November 2012	\$1,048.00
Use and Occupancy for December 2012	1,093.00
Late payment fee	25.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$2,216.00
<b>LESS:</b> Security Deposit \$445.00 + Interest 7.27	-452.27
<b>Offset amount Due to the Landlord</b>	<b><u>\$1,763.73</u></b>

#### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order for **\$1,763.73**. 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 18, 2012.

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Residential Tenancy Branch