



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR

### Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent and for a Monetary Order for unpaid rent.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and served in person to the tenant by the landlord on November 10, 2012.

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. 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?

### Background and Evidence

The landlord testifies that this fixed term tenancy started July 01, 2012. Rent for this unit is \$800.00 per month and is due on the 1st of each month plus 30 percent of utilities.

The landlord testifies that the tenant failed to pay all the rent for October, 2012 leaving an unpaid balance of \$310.00. The tenant failed to pay all the rent for November, 2012

leaving an unpaid balance of \$210.00. The landlord testifies that the tenant also owes a sum for utilities and had agreed to pay \$95.00 per month towards the utilities and the balance would be dealt with at the end of the year. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 02, 2012. This was served to the tenant in person. This Notice states that the tenant owes rent of \$700.00 which was due on November 01, 2012. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on November 12, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay all the rent for December 2012 leaving an outstanding balance of \$210.00. The total amount of outstanding rent is now \$730.00. The landlord has requested to amend the application to include unpaid rent for December as the tenant continues to reside in the unit.

The landlord requests an Order of Possession to take effect as soon as possible.

### Analysis

*Section 26 of the Residential Tenancy Act (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, as the tenant has failed to attend the hearing to dispute the landlords claim I find from the documentary evidence and testimony of the landlord that the tenant has failed to pay rent for October, November and December 2012 and the landlord is entitled to recover these rent arrears. I have allowed the landlord to amend this application to include unpaid rent for December, 2012 as the tenant continues to live in the rental unit and would be aware that rent is due on the first day of each month. Consequently, the landlord will receive a Monetary Order to the sum of **\$730.00**.

The landlord has provided no evidence that there was agreement for the tenant to pay \$95.00 per month towards utilities and the tenancy agreement simply states the tenant will pay 30 percent of utilities. However the landlord has provided no evidence to show what utilities are outstanding. Therefore this section of the landlords claim is dismissed.

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 amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$730.00**. 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 upon 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: December 11, 2012.

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Residential Tenancy Branch