



# 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 dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on December 12, 2012, a Canada post tracking number was provided as evidence of service, the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

### Preliminary Issue

The landlord's agent stated on January 4, 2013, they were informed that the tenant had vacated the unit and an order of possession is no longer required.

### Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?  
Is the landlord entitled to retain all or part of the security deposit?

### Background and Evidence

Based on the testimony of the landlord's agent, I find that the tenant was served with a Notice to End Tenancy for non-payment of rent. The tenant has not paid all the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, which was November 19, 2012. On January 4, 2013, the landlord was informed the tenant had vacated the rental unit.

The landlord's agent stated the tenant did not pay any rent for November, December 2012 and January 2013.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act by the tenant and a corresponding loss.

Although the landlord is entitled to an order of possession in these circumstances, the tenant has vacated the rental unit and therefore, an order of possession is no longer required.

Section 26 of the Residential Tenancy Act states:

**26** (1) *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.*

The evidence of the landlord's agent was the tenant did not pay rent for November, December 2012 and January 2013. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord.

I find the landlord has established a total monetary claim of **\$2,783.00** comprised of the unpaid rent, and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit and interest of **\$405.90** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$2,377.10**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenant failed to pay rent and did not file to dispute the Notice to End Tenancy, and vacated the rental unit. Therefore, an order of possession is not required.

The landlord is granted a monetary order for rent due, and may keep the security deposit and interest in partial satisfaction of the claim. The landlord is granted a formal order for the balance due.

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: January 14, 2013

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Residential Tenancy Branch

