



# 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.

The tenant, an interpreter for the tenant and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### 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 month to month tenancy started on March 01, 2012 although the tenant moved in a few days earlier. Rent for this unit is \$675.00 per month. Rent is due on the first day of each month. The tenant paid a security deposit of \$358.00 on February 27, 2012.

The landlord testifies that the tenant paid \$500.00 for October, 2012 leaving an amount due of \$175.00. The landlord testifies that the tenant failed to pay rent for November, 2012 and the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on November 17, 2012 by posting the Notice to the tenant's door. The Notice was deemed to have been served three days after posting. This Notice states that the tenant owes rent of \$850.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 27, 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 December, 2012 of \$675.00 and for January, 2013 of \$675.00. The total amount of outstanding rent is now \$2,200.00 and the landlord seeks a Monetary Order to recover this amount.

The landlord has applied to retain the tenant's security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect within two days of service.

The tenant disputes the landlords claim and testifies that he only paid \$500.00 in October because the landlord had not repaired a window and the tenant had to repair a blocked toilet. The tenant testifies that he paid rent for November and December to the landlord's daughter but did not get a receipt. The tenant claims he has never had a receipt from the landlord for rent. The tenant claims to have a bank deposit slip showing he withdrew the rent money from his bank in cash but has failed to provide these in evidence. The tenant testifies that he also paid rent for January, 2013 to the landlord in cash.

The landlord disputes the tenants claim. The landlord testifies that whenever the tenant pays cash the landlord gives the tenant a rent receipt. The landlord testifies that the tenant told the landlord in October that he would not pay any more rent and would not move from the rental unit.

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.*

The tenant claims he has paid rent to the landlord and the landlord's daughter however the tenant has the burden of proof in this matter to show that he did pay the rent and has failed to meet that burden of proof. Consequently I am satisfied with the evidence before me that the tenant has failed to pay rent for October, 2012 of \$175.00, for November and December, 2012 and for January, 2013. Therefore I find the landlord is entitled to recover rent arrears to the sum of **\$2,200.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$358.00** 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                         | \$2,200.00        |
| Less Security Deposit                    | (-\$358.00)       |
| Plus filing fee                          | \$50.00           |
| <b>Total amount due to the landlords</b> | <b>\$1,892.00</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 November 20, 2012. 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 in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,892.00**. 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*.

**NOTE: THIS DECISION CORRECTS AND REPLACES THE DECISION I ISSUED ON January 24, 2013 WHICH HAD A MATHEMATICAL ERROR.**

Dated: February 12, 2013

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Residential Tenancy Branch

