



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

At the onset of the Hearing the Landlord confirmed that the application for dispute resolution and notice of hearing (the “Application”), made February 20, 2013, was served on the Tenant’s child on March 2, 2013 and then sent by registered mail to the Tenant on March 6, 2013. The Tenant states that the 10 day notice to end tenancy was also served on the Tenant’s child. The Tenant states that given the late service of the Application the Tenant had no time to gather evidence to submit to the hearing. The Landlord stated that the Application was not served on the Tenant as the rent cheque provided by the Tenant had not yet bounced and the Landlord had not read the instructions from the Residential Tenancy Branch in relation to service of the Application. The Parties agree that rent for February and March 2013 has not been paid, that rent is \$1,125.00 per month and that the Landlord collected a security deposit

of \$567.50 at the outset of the tenancy. The Tenant states that she will be moved out of the unit on Friday March 22, 2013.

Section 59 of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making the application. Section 88 of the Act sets out the approved methods for service of a notice to end tenancy. These methods do not include service to a minor.

Based on the Landlord's evidence that the application was not served on the Tenant within three days of making the application and accepting that the Tenant's opportunity to respond to the claims in the application was prejudiced by the late receipt of the Application, and considering the undisputed evidence that the Notice was not served on the Tenant, I find that the Landlord has not substantiated its claim for an order of possession and I dismiss this part of the application.

As the Tenant agreed that no rent was paid for February 2012, I find that the Tenant has not been prejudiced by the late served Application in relation to the payment of this rent and that the Landlord has therefore substantiated an entitlement of **\$1,125.00**. As the Tenant has agreed that no rent has been paid for March 2013 but is moving out of the unit on March 22, 2013, noting that the Landlord ended the tenancy by providing the Tenant with a notice to end tenancy and considering the prejudice to the Tenant in relation to the improperly served Notice, I find that the Landlord has substantiated rent payable to March 22, 2013 calculated at a per diem rate of \$36.30 for 22 days in the amount of **\$798.60** for a total entitlement of **\$1,923.60**.

Given the Landlord's failure to serve either the Notice or the Application as required under the Act, I decline to award recovery of the filing fee. Setting the security deposit of **\$567.50** plus zero interest off the entitlement leaves **\$1,356.10** owed by the Tenant to the Landlord.

Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$567.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,356.10**. If necessary, this order may be filed in the Small Claims 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: March 19, 2013

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Residential Tenancy Branch

