



# 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 a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and/or loss of rent; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord provided a registered mail receipt, including tracking number, as evidence the hearing documents were sent to the tenant at the rental unit on February 9, 2013. The landlord testified that he personally observed the registered mail notice card posted on the tenant's door; however, the registered mail was returned as unclaimed. The landlord confirmed the tenant continues to occupy the rental unit. I was satisfied the landlord served the tenant with notification of this proceeding in a manner that complies with the Act and I proceeded to hear from the landlord without the tenant present.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to compensation for unpaid rent and/or loss of rent for the months of February and March 2013?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The parties executed a written tenancy agreement on June 4, 2012 for a tenancy set to commence July 1, 2012 on a month to month basis. The tenant paid a security deposit of \$925.00 and is required to pay rent of \$1,850.00 on the 1<sup>st</sup> day of every month. The landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice). The Notice has a stated effective date of February 2, 2013. The tenant paid only \$925.00 toward the rent owed for February 2013 and has not paid any monies for March 2013 yet the tenant has not returned possession of the unit to the landlord.

By way of this application the landlord seeks to recover unpaid rent of \$925.00 for February 2013 and loss of rent for March 2013.

The landlord provided copies of the following documents as evidence for this proceeding: the tenancy agreement; the 10 Day Notice; a signed Proof of Service document for the 10 Day Notice; a picture of the female landlord serving the tenant with the 10 Day Notice; and, the registered mail receipt and tracking information.

### Analysis

Under the Act a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Based upon the evidence presented to me, I accept that the landlord personally served a 10 Day Notice upon the tenant on February 2, 2013. The effective date of the Notice is automatically changed to comply with the Act and reads February 12, 2013 sections 46 and 53 of the Act

Since the tenant did not pay all of the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on February 12, 2013 and the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenant.

Based upon the evidence before me, I find the landlord entitled to recover unpaid rent for February 2013 in the amount of \$925.00. I further award loss of rent to the landlord in the amount of \$1,850.00 for the month of March 2013 since the tenant did not give proper notice to end the tenancy for the end of February 2013; the tenant did not vacate the rental unit within 10 Days of receiving the 10 Day Notice; and, the tenant continues to occupy the rental unit.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord. I also award the landlord the filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent: February 2013	\$ 925.00
Loss of Rent: March 2013	1,850.00
Filing fee	50.00
Less: security deposit	<u>(925.00)</u>
Monetary Order	\$ 1,900.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,900.00 to serve and enforce as necessary.

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 05, 2013

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Residential Tenancy Branch

