



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 26, 2013, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to keep all or part of the security deposit; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was served copies of the application for dispute resolution and notice of hearing documents by registered mail on March 1, 2013. The Canada Post tracking number was provided in the Landlord's testimony (RW 772501439CA). Based on the submissions of Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act, and I continued in the Tenant's absence.

### Issue(s) to be Decided

1. Should the Landlord be awarded an Order of Possession?
2. Should the Landlord be issued a Monetary Order?

### Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: the tenancy agreement; a 10 Day Notice issued February 6, 2013; and a tenant ledger.

The Landlord confirmed the Tenant entered into a month to month tenancy that began on October 25, 2012. Rent is payable on the first of each month in the amount of \$720.00 and on October 24, 2012 the Tenant paid \$360.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay the \$10.00 accumulated unpaid rent and the February 1, 2013 rent of \$720.00 they posted a 10 Day Notice for unpaid rent to the Tenant's door on February 6, 2013.

The Landlord advised that when he entered the unit near the beginning of March 2013 he noticed that the Tenant still has some furniture, debris, and clothing in the rental unit. The Tenant has not made a payment to the balance owing and did not pay the March 1, 2013 rent. The Landlord seeks an Order of Possession for as soon as possible and a monetary order for February unpaid rent and loss of rent for March 2013 in the amount of \$1,420.00 (2 x \$720.00).

### Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant is deemed to have received the 10 Day Notice on February 9, 2013, three days after it was posted to her door, and the effective date of the Notice is **February 19, 2013**, in accordance with section 90 of the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit to which the notice relates, pursuant to section 46(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession.

The Landlord claimed for unpaid rent of \$720.00 which was due February 1, 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord a Monetary Award for unpaid rent of **\$720.00**.

As noted above, this tenancy ended **February 19, 2013**, in accordance with the 10 Day Notice and the Tenant continues to occupy the unit. Accordingly, I find the Landlord will not regain possession until after service of the Order of Possession and they will have to work to find replacement tenants. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire month of March 2013, in the amount of **\$720.00**.

The Landlord has been successful with their application; therefore, I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent	\$ 720.00
Use & Occupancy & Loss of March 2013 rent	720.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,490.00
<b>LESS:</b> Security Deposit \$360.00 + Interest 0.00	<u>-360.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$1,130.00</u></b>

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **Two (2) Days upon service**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$1,130.00**. This Order is legally binding and must be served upon the Tenant.

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 22, 2013

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Residential Tenancy Branch

