



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 19, 2013 by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was personally served with copies of the application for dispute resolution and notice of hearing documents on February 21, 2013, at the rental unit. The Tenant signed the proof of service document, provided in the Landlord's evidence, acknowledging receipt of the hearing documents. Based on the submissions of Landlord I find that the Tenant was sufficiently served notice of this proceeding 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 10 Day Notice to end tenancy for unpaid rent; the tenancy agreement; a tenant ledger; and proof of service documents.

The Landlord stated that the parties entered into a written fixed term tenancy agreement that began on May 1, 2012 and is set to end on April 30, 2013. Rent is payable on the first of each month in the amount of \$825.00 and \$412.50 was paid on April 27, 2012 as the security deposit.

The Landlord said that when the Tenant failed to pay February 1, 2013 rent and the \$95.00 owed from January 2013, a 10 Day Notice was personally served to the Tenant on February 5, 2013.

The Tenant is still occupying the unit and has not paid the balance owing or the March 2013 rent. They are seeking late payment fees, the unpaid rent, and an Order of Possession.

### 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 received the 10 Day Notice on February 5, 2013, and the effective date of the Notice is **February 15, 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 unpaid rent of \$920.00 which includes \$95.00 owed from January 1, 2013 plus \$825.00 that 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 **\$920.00**.

As noted above this tenancy ended **February 15, 2013**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the unit for March 2013, not rent. The Tenant is still occupying the unit which means the Landlord will not regain possession until after service of the Order of Possession and then 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 **\$825.00**.

Section 3(a) of the tenancy agreement provides for late payment charges of \$20.00, in accordance with the *Residential Tenancy Regulation*. Accordingly, I award the Landlord late payment charges for February 2013, in the amount of **\$20.00**.

The Landlord has also applied for late payment fees for March 2013 in accordance the tenancy agreement. However, this tenancy agreement ended February 15, 2013, in accordance with the 10 Day Notice; therefore the Landlord may not make a claim for late payment fees for March 2013, as this tenancy was no longer in effect at that time. Accordingly, I dismiss the Landlord's claim of \$20.00 for March 2013 late fees.

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

### 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 **\$1,815.00** (\$920.00 + \$825.00 + \$20.00 + \$50.00). 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 15, 2013

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Residential Tenancy Branch

