



# Dispute Resolution Services

Page: 1

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 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;
3. A Monetary Order for compensation – Section 67;
4. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The tenancy began on July 1, 2010. Rent in the amount of \$840.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord

collected a security deposit from the Tenant in the amount of \$412.50. The tenancy agreement provides for a \$20.00 fee for late rent payments and \$10.00 per month parking charge. The Tenant failed to pay rent or parking for March 2013 and on March 2, 2012 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Tenant has not paid the outstanding rent or parking, has not made an application to dispute the Notice and moved out of the unit on or about March 26, 2013 without informing the Landlord or returning the keys. The Landlord claims unpaid rent, late fees and the parking charge for March 2013. The Landlord states that the unit is still empty and seeks unpaid April 2013 rent. The Landlord does not require an Order of Possession.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy has ended. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

Based on the Landlord's evidence I find that the Tenant has not paid the March rent, late fee and parking and that the Landlord is therefore entitled to **\$870.00**. Further based on the Landlord's evidence I find that the tenancy ended pursuant to the Notice on the effective date of the Notice at the Landlord's election. Given that the Tenant left before the end of March 2013, that the Landlord recovered possession of the unit at that time and considering that the Landlord provided no evidence of attempts to rent the unit for April 2013, I find that the Landlord has not substantiated its claim for unpaid April 2013 rent and I dismiss this claim. The Landlord is entitled to recovery of the **\$50.00**

filing fee for a total monetary amount of **\$920.00**. Setting the security deposit of **\$412.50** plus zero interest off the entitlement leaves **\$507.50** owed by the Tenant to the Landlord.

Conclusion

**I order** that the Landlord retain the **deposit** and interest of \$412.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$507.50**. 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: April 17, 2013

---

Residential Tenancy Branch