



# 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 by way of conference call in repose to the landlords' application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on August 19, 2013. Mail receipt numbers were provided by the landlord's agent in sworn testimony. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords' agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

## Background and Evidence

The landlord's agent testifies that this tenancy started on May 01, 2012 for a fixed term of one year. On May 01, 2013 a new tenancy agreement was entered into with the tenant for another one year fixed term due to expire on April 30, 2014. Rent for this unit was \$2,650.00 and this was increased on May 01, 2013 to \$2,750.00 per month. Rent is due on the 1st of each month.

The landlord testifies that the tenant failed to pay the rent due for August, 2013. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on August 02, 2013. This was sent to the tenant by registered mail and was deemed to have been served five days after posting. This Notice states that the tenant owes rent of \$2,750.00 which was due on August 01, 2013. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on August 17, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant failed to pay rent for September on the day it was due but did make a payment of \$2,750.00 on September 03, 2013 and this was accepted for use and occupancy only. The total amount of outstanding rent is \$2,750.00.

The landlord requests an Order of Possession to take effect as soon as possible; a Monetary Order to recover the unpaid rent and filing fee of \$50.00.

## Analysis

Section 26 of the *Residential Tenancy Act (Act)* states:

*A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, as the tenant has failed to attend the hearing to dispute the landlords claim I find from the documentary evidence and testimony of the landlord that the tenant has failed to pay rent for August, 2013 and the landlord is entitled to recover these rent arrears. Consequently, the landlord will receive a Monetary Order to the sum of **\$2,750.00** pursuant to s. 67 of the *Act*.

The landlord is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,800.00** comprised of unpaid rent and the filing fee. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon the tenant** This order must be served on the Respondent and may be filed in the Supreme 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: September 26, 2013

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Residential Tenancy Branch

