



# 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 the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord testified that he personally served the hearing package upon the tenant on October 16, 2014 at the rental unit. Based upon the undisputed testimony of the landlord, I accepted that the tenant had been served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord stated that he has not seen the tenant at the property since November 13, 2014 and the tenant may have vacated; however, the tenant did not return the keys to the rental unit. The landlord requested an Order of Possession in the event the tenant has not vacated the rental unit.

The landlord requested his application be amended to include loss of rent for the month of November 2014 since the tenant continued to reside in the rental unit in November 2014 and the landlord has not yet regained possession of the unit. I permitted the amendment as I found it non-prejudicial to the tenant considering the tenant had the continued benefit of use of the rental unit well into the month of November 2014 causing the landlord to suffer further losses.

The landlord also requested the application be amended to include authorization to retain the security deposit in partial satisfaction of the rent that is owed. I permitted the amendment as I found this request non-prejudicial to the tenant since it reduces the Monetary Order that is provided to the landlord.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent and loss of rent?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The landlord testified that the tenancy commenced in February 2014 and the tenant paid a security deposit of \$250.00. The tenant was required to pay rent of \$500.00 on the 1<sup>st</sup> day of every month. The tenant paid the landlord \$260.00 by way of three installments of \$110.00,

\$80.00 and \$70.00 for the month of September 2014 leaving a balance outstanding of \$240.00. The tenant failed to pay any rent for October 2014.

The landlord personally served the tenant with both pages of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on October 6, 2014. The Notice indicates rent of \$750.00 was outstanding and had a stated effective date of October 16, 2014. The tenant did not pay the outstanding rent or file to dispute the Notice. Nor, did the tenant vacate the rental unit by October 16, 2014.

The landlord testified that the tenant was last seen at the rental unit on November 13, 2014. The landlord is uncertain as to whether the tenant has since vacated the rental unit; however the tenant has not returned the keys to the landlord and the landlord has not yet taken possession of the rental unit. The landlord seeks to recover the rent owed for September and October 2014 plus loss of rent for the month of November 2014.

### Analysis

Under the Act a tenant, is required to pay rent when due in accordance with their tenancy agreement, whether that agreement is in writing or oral. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. A tenant who 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.

I accept the evidence before me that the landlord served the tenant with a 10 Day Notice on October 16, 2014. Since the tenant did not pay the outstanding rent or dispute the Notice within five days of receiving the Notice I find the tenancy ended on October 16, 2014 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 September 2014 in the amount of \$240.00 and \$500.00 for the month of October 2014. Since the tenant did not vacate the rental unit when required under the Act, the tenant benefited from his violation but caused the landlord to suffer further loss of rent for the month of November 2014. Therefore, I award the landlord loss of rent in the amount of \$500.00 for the month of November 2014.

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 recovery of the \$50.00 filing fee paid for this application.

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

Unpaid Rent: September 2014	\$ 240.00
Unpaid Rent: October 2014	500.00
Loss of Rent: November 2014	500.00
Filing fee	50.00
Less: security deposit	<u>(250.00)</u>
Monetary Order	\$1,040.00

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

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant to serve and enforce in the event the tenant has not already vacated the rental unit.

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,040.00 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: November 26, 2014

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Residential Tenancy Branch

