



# 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 was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord's agents attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issues(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 rent owed?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

MA testified that this month to month tenancy started on May 01, 2014. Rent for this unit was \$720.00 per month due on the 1<sup>st</sup> of each month. The rent was later reduced by the landlord to \$500.00 a month due to repairs required in the unit around August or September, 2014. The tenant paid a security deposit of \$360.00 at the start of the tenancy.

MA testified that the tenant owed rent of \$500.00 a month for August, September, October, November and December, 2014 to an amount of \$2,500.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent (the Notice) on December 03, 2014. This was posted on the tenant's door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 13, 2014. The tenant did not pay the outstanding rent or file an application to dispute the Notice. Since that time the tenant has failed to pay rent for January, 2015 of \$500.00. The total amount of unpaid rent is now \$3,000.00.

The landlord has applied to retain the tenant's security deposit of \$360.00 in partial payment of the rent arrears.

The tenant testified that she had paid rent for September, 2014 and has a rent receipt from the landlord to show this. The tenant testified that she suffers with a medical condition that makes it difficult to send in any evidence for this hearing. The tenant agreed that she has not paid any rent for October, November, December and January. The tenant testified that the agreement with the landlord at the beginning of the tenancy was that the landlord would come and collect the rent each month. The landlord has not done this and the tenant has to go to the landlord's workplace to find him to pay the rent. This is made difficult due to the tenant's medical condition.

SM joined the hearing and agreed to reduce the landlord's monetary claim for unpaid rent to October, November and December of \$1,500.00. SM requested an Order of Possession with an effective date of January 31, 2015. SM also agreed that if the tenant paid the rent for January and February on or before January 28, 2015 the landlord will not enforce the Order of Possession before February 28, 2015. SM stated that this will ensure the tenant has some extra time to find alternative housing.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 26 of the *Act* which 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.*

I am satisfied that there is outstanding rent of \$3,000.00. The tenant claimed that rent was paid for September but has provided insufficient corroborating evidence to support this. SM acting on behalf of the landlord agreed to reduce the landlord's monetary claim for unpaid rent to \$1,500.00. Consequently, it is my decision that the landlord is entitled to recover this reduced amount of rent and will receive a Monetary Order for \$1,500.00 pursuant to s. 67 of the *Act*.

I Order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$360.00 in partial satisfaction of the rent arrears.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the balance owing as follows:

Outstanding rent (amount now claimed)	\$1,500.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$360.00)
<b>Total amount due to the landlord</b>	<b>\$1,190.00</b>

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. As this Notice was posted on the tenant's door it was deemed served three days after posting on December 06, 2014. The effective date of the Notice is amended to December 16, 2014 pursuant to s. 53 of the *Act*. The tenant did not pay all 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. As this date has since passed I grant the landlord an Order of Possession effective on January 31, 2015 pursuant to s. 55 of the *Act*.

As the landlord has agreed not to enforce the Order of Possession on January 31, 2015 if the tenant makes a rent payment for January and February on January 28, 2015. If the tenant pays \$1,000.00 on January 28, 2015 the tenant may continue to reside in the rental unit until February 28, 2015.

### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,190.00** pursuant to s. 67 and 72(1) of the *Act*. 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 on January 31, 2015. This Order must be served on the Respondent and may be filed in the Supreme Court and enforced as an Order of that Court as detailed above.

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: January 19, 2015

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Residential Tenancy Branch

