



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPITAL J MANAGEMENT LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on September 24, 2015 seeking to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or Utilities; to keep all or part of the security and or pet deposit; and to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by two agents for the Landlord and the Tenant. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony and the Tenant confirmed receipt of the Landlord's documentary evidence. No issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Landlord met the burden of prove to be granted an Order of Possession?
2. Has the Landlord proven entitlement to a Monetary Order?

### Background and Evidence

The undisputed evidence was the Tenant entered into a written month to month tenancy that began on April 1, 2006. The current rent of \$835.00 was due on or before the first of each month. On March 9, 2006 the Tenant paid \$365.00 as the security deposit.

The Landlord testified that when the Tenant failed to pay their August 1, 2015 and September 1, 2015 rent in full the Landlord posted a 10 Day Notice under the Tenant's door on September 2, 2015 listing \$1,670.00 of rent that was due on September 1, 2015. The Tenant remains in the unit and has not paid the rent owing for August, September, October or November 2015 for a total amount owed of \$3340.00.

The Landlord requested that his application be amended to include that unpaid rents for October and November 2015 as his September 24, 2015 application was not scheduled to be heard until November 25, 2015. The Landlord seeks an order of possession and compensation for all unpaid rents.

The Tenant testified and confirmed receipt of the 10 Day Notice that was served upon her. She did not file an application to dispute the Notice and simply continued to reside in the rental unit without paying rent. She asserted that she called a representative for the Landlord each month and told them that she did not have the money to pay the rent. She submitted that she was intending to pay the money owed when she receives money at the end of November.

### 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 September 2, 2015. The effective date of the Notice is therefore **September 12, 2015**, pursuant to section 46 of the *Act*.

The Tenant neither paid the rent nor disputed the Notice; therefore, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, **September 12, 2015**, 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 undisputed evidence was the Tenant failed to pay rent for August and September totaling \$1,670.00 (2 x \$835.00). Landlord claimed unpaid rent of \$1,670.00 that was due September 1, 2015, in accordance with section 26 of the Act which stipulates a tenant must pay rent in accordance with the tenancy agreement. Based on the aforementioned, I award the Landlord unpaid rent for August and September 2015, in the amount of **\$1,670.00**.

62(3) of the Act stipulates, in part, that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act.

As noted above this tenancy ended **September 12, 2015**, in accordance with the 10 Day Notice. Therefore I find the Landlord made an oral request to amend his application to include compensation for use and occupancy of the unit and not rent for October and November 2015. The Tenant has resided in this rental unit since 2006 and knows full well that she is required to pay the Landlord on a monthly basis for the right to occupy and use the premises. Accordingly, I grant the Landlord's request to amend his application for compensation for use and occupancy, pursuant to section 62 of the Act.

The Landlord will not regain possession of the unit until after service of the Order of Possession; therefore, I award the Landlord use and occupancy and any loss of rent for the entire months of October and November 2015, in the amount of **\$1,670.00** (2 x \$835.00). If the Landlord suffers additional loss they are at liberty to file another application for that loss.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

**Monetary Order** –This claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security deposit plus interest as follows:

Unpaid Rent Aug. & Sep. 2015	\$1,670.00
Use & Occupancy & Loss of Rent	1,670.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	<b>\$3,390.00</b>
<b>LESS: Security Deposit \$365.00 + Interest \$12.57</b>	<u><b>-377.57</b></u>
<b>Offset amount due to the Landlord</b>	<b><u>\$3,012.43</u></b>

Conclusion

The Landlord has been granted an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord has been awarded a Monetary Order for **\$3,012.43**. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with 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: November 25, 2015

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Residential Tenancy Branch

