



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee. The landlord also applied for money owed or compensation for damage or loss under the act to recover rent for December, 2009 and January, 2010 in the event the hearing did not take place until 2010 and the tenant had not vacated the rental unit.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, and was given to the tenant in person on November 25, 2009. The landlords witness gave sworn testimony that the tenant was served the hearing documents at 11.30 on November 25, 2009.

The landlord's agent appeared, gave her testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Whether the landlord is entitled to an Order of Possession?
- Is the landlord entitled to keep all or part of the security deposit?



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- Is the landlord entitled to recover rent for December, 2009?
- Whether the landlord is entitled to a Monetary Order of 3,000.00 to recover unpaid rent and the filing fee?

## Background and Evidence

This tenancy started on April 01, 2009. This is fixed term tenancy until March 30, 2010. Rent is \$850.00 per month due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$425.00 on March 17, 2009.

The tenant owes outstanding rent for June, 2009 of \$150.00. She paid rent in full for July and August, 2009 and owes outstanding rent for September, 2009 of \$350.00. The tenant paid \$950.00 in rent for October, 2009 which gave her a credit of \$100.00 towards the rent arrears. The tenant did not pay rent for November, 2009. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on November 04, 2009. This was posted to the tenants' door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on November 17, 2009. The tenant did not pay the outstanding rent or dispute the Notice within five days. The total amount of rent arrears when the 10 Day Notice was issued were \$1,250.00. The tenant has not paid rent for December, 2009 and the total amount of rent arrears are now \$2,100.00.

The landlord has applied to retain the tenants' security deposit of \$425.00 in partial payment towards the rent arrears.

The landlord has applied for an Order of Possession to take effect as soon as possible.



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## Analysis

The tenant did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenant, 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 on November 17, 2009. The tenant did not pay the outstanding rent within five days nor did she 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.

I also find that the landlord is entitled to recover rent arrears for June, September, November and December, 2009 of \$2,100.00 pursuant to s. 67 of the *Act*. As the landlord has obtained an order of Possession effective two days after service on the tenant it would be premature to give them a monetary award for January, 2010 rent. I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit in partial payment of the rent arrears.

As the landlord has been successful in this matter, they are also entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$2,100.00
Less security deposit	(-\$425.00)
Total amount due to the landlord	\$1,725.00



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## Conclusion

**I HEREBY FIND** in favor of the landlord's reduced monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,725.00**. 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 on 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: December 08, 2009.

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Dispute Resolution Officer