



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, and to recover the cost of the filing fee from the Tenant.

The Landlord and Tenant appeared, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation, or tenancy agreement?
2. If so, has the Landlord proven entitlement to an Order of Possession and a Monetary Order as a result of that breach?

### Background and Evidence

I heard undisputed testimony that the parties entered into a written fixed term tenancy effective November 1, 2009 which switched to a month to month tenancy after October 31, 2010. Rent is payable on the first of each month in the amount of \$1,250.00 and the Tenant paid \$625.00 for a security deposit and \$150.00 as a pet deposit on October 31, 2010.

The Landlord stated that he had served the Tenant both the Order of Possession and the Monetary Order as soon as he received them at the end of October 2010, however he has since accepted payments from the Tenant and agreed to reinstate the tenancy. He advised that he is no longer willing to negotiate with the Tenant as she has failed to pay rent for November 2010, December 2010, and January 2011.

The Landlord issued another 10 Day Notice to End Tenancy which he personally served to the Tenant on December 3, 2010, as acknowledged by her signature on the Notice provided in the Landlord's evidence.



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The Tenant testified and confirmed she has not paid her rent because she cannot work and has been receiving employment insurance (EI). She stated that she was aware that she will be required to move.

## Analysis

I find that in order to justify payment of damages or losses under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant.

**Order of Possession** - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, that the Tenant failed to pay the rent within 5 days after receiving this notice, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Based on the aforementioned, I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$3,750.00 comprised of \$1,250.00 for November 2010, December 2010, and January 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Based on the aforementioned I find the Landlord has met the burden of proof and I hereby approve his claim for unpaid rent of \$3,750.00.

The Landlord has succeeded with his application; therefore I award recovery of the \$50.00 filing fee.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim as follows:



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Unpaid Rent for November 2010, December 2010, January 2011	\$3,750.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$3,800.00</b>

## Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$3,800.00**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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: January 05, 2011.

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Residential Tenancy Branch