



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OPR, MNR, MND, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing in person by the Landlord on January 6, 2011, the Tenant did not appear. The Landlord did not appear to confirm delivery of the Notice of Hearing, but the Landlord's witness appeared and gave affirmed testimony that he witnessed the delivery of the documents. I accepted the testimony of the witness and proceeded with the hearing.

The Landlord's Agent, with the benefit of a translator, appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and make submissions to me.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Based on the affirmed testimony and evidence of the Landlord's Agent, I find that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on December 22, 2010, in person. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant did not apply to dispute the Notice.

The monthly rent is \$675.00 and I accept that a security deposit paid of \$330.00 was paid, but applied towards the September rent, by testimony of the Landlord's Agent.

The Landlord's Agent testified that the Tenant owes unpaid rent for the length of the tenancy in the amount of \$1,725.00.

The Landlord provided no evidence of payments and upon query I heard testimony from the Landlord's Agent that she records the Tenant's payments by making a mental note.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **2 days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

I find the Landlord was obligated to prove his loss of rent through tenant ledger sheets, receipts or any other form of accounting methods. I find the Landlord submitted insufficient evidence to prove his monetary claim for unpaid rent for this tenancy and I **dismiss** his claim for a monetary order in its entirety without leave to reapply.

As the Landlord has been successful in his Application for an Order of Possession, I allow him to deduct \$50.00 from the security deposit for recovery of his filing fee.

### Conclusion

The Tenant failed to pay rent and did not apply to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession.

The Landlord's claim for unpaid rent is dismissed, without leave to re-apply.

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 21, 2011.

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Residential Tenancy Branch