



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## Decision

### Dispute Codes:

MNR, MNDC, OPR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated January 13, 2011, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim.

Despite being served by registered mail sent on February 1, 2011, the tenant did not appear and the hearing proceeded in the respondent's absence.

### Issue(s) to be Decided

The landlord was seeking an Order of Possession. The landlord was also seeking a monetary order claiming unpaid rent of \$1,310.00 for 3 months and bank fees for a returned cheque.

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and loss of rent

### Background and Evidence

The landlord testified that the tenancy began on January 1, 2007 and the current rent is now \$1,310.00. A security deposit of \$618.00 was paid. The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy for Unpaid Rent dated January 13, 2011 with effective date of January 28, 2011 which was served on the tenant by registered mail sent on January 13, 2011. The landlord testified that the tenant failed to pay rent of \$1,310.00 for the months of December 2010, January 2011 and February 2011 totaling arrears of \$3,930.00.

The landlord testified that the amount being sought included rental arrears as well as bank fees owed. The landlord was also seeking to end the tenancy under section 46 for unpaid rent and asked for an order of possession.

### **Analysis**

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. 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. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to receive compensation for rental arrears owed by the tenant. In regard to the bank fees, the Act permits this to be claimed provided that it is contained as a term in the tenancy agreement. I find that the landlord did not submit a copy of the tenancy agreement into evidence and therefore, the portion of the claim relating to bank and NSF fees must be dismissed.

However, I find that the landlord has established a total monetary claim for rent owed in the amount of \$3,980.00 comprised of \$3,930.00 rental arrears and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$636.68 in partial satisfaction of the claim leaving a balance due of \$3,616.32.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective January 14, 2008. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I grant the Landlord an order under section 67 for \$3,616.32. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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: February 2011.

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Residential Tenancy Branch