



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPR MNR MNSD MNDC 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, to keep the security deposit in partial satisfaction of their claim, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served personally to the Tenant on January 18, 2011 at 3:45 p.m.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. The Tenant did not appear at the hearing despite being served notice of the hearing in accordance with the Act.

### Issue(s) to be Decided

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

### Background and Evidence

The tenancy agreement was for a fixed term commencing March 15, 2010 and set to switch to a month to month tenancy after February 28, 2011. Rent is payable on the first of each month in the amount of \$900.00. The Tenant paid a security deposit of \$450.00 and a pet deposit of \$450.00 on March 2, 2010.

The Landlord testified that when the Tenant failed to pay full rent for January 2011, a 10 Day Notice to End Tenancy was issued and posted to the Tenant's door on January 3, 2011 in the presence of a witness. The Tenant has since paid \$400.00 on January 19, 2011 when a receipt was issued for "use and occupancy only", and another payment of \$200.00 on January 26, 2011 when another receipt was issued for "use and occupancy only". After these two payments the Tenant had a credit of \$25.00 towards her February 1, 2011 rent however she has failed to make any additional payments towards February and she is still occupying the rental unit.

The Landlord confirmed she is seeking the Order of Possession and a Monetary Order of \$900.00 which includes the \$875.00 balance due for February 2011 and the \$25.00 late payment fee as provided in #12 of the tenancy agreement.

### 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** – The evidence supports the Tenant was issued the 10 Day Notice to End Tenancy in accordance with section 26 of the *Act* and the Tenant failed to pay the rent in full within the 5 day time limit. Payments were later received for "use and occupancy only" which did not reinstate the tenancy. Therefore I find the Landlord has met the burden of proof and I approve her request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for balance of unpaid rent of \$875.00 for February 1, 2011, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore the Landlord has met the burden of proof and I approve her claim for **\$875.00** of unpaid rent.

**Late payment fees** – The evidence supports that the tenancy agreement provides for the Landlord to collect late payment charges of \$25.00, in accordance with section 7 of

the Residential Tenancy Regulation. As the Tenants have been late in paying their February 1, 2011 rent, the Landlord is entitled to claim the late payment fee of **\$25.00**.

**Filing Fee \$50.00-** I find that the Landlord has succeeded with her application and is entitled to recover the cost of the filing fee from the Tenant.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's pet and security deposits as follows:

Unpaid Rent for February 1, 2011	\$875.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the Landlord)	<b>\$950.00</b>
Less Security Deposit of \$450.00 plus pet deposit of \$450.00 plus interest of \$0.00	900.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$50.00</b>

### Conclusion

The Landlord's decision will be accompanied by an Order of Possession effective **two days upon service** to the Tenant. The Order must be served to the Tenant and may be filed in Supreme Court and enforced as an Order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$50.00**. 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: February 04, 2011.

---

Residential Tenancy Branch