



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was scheduled to hear the landlord's application for an Order of Possession and Monetary Order for unpaid rent. The tenant did not appear at the hearing. The landlord's agent asked that I call his father to attest to service of the hearing package upon the tenant. I called the landlord who affirmed that he served the tenant in person at her rental site on March 28, 2011. I was satisfied of service of the hearing documents and proceeded to hear from the landlord's agent.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?  
Is the landlord entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The landlords' agent testified that the tenant is required to pay rent of \$506.44 on the 1<sup>st</sup> day of every month. The agent testified that on February 5, 2011 the caretaker posted a 1 Month Notice to End Tenancy for Cause on the tenant's door.

In making this application the landlord is seeking a Monetary Order for rental arrears accumulated to December 2010 and unpaid rent and late fees for January, February, March and April 2011, less a \$2,500.00 payment made in December 2010 and a \$750.00 payment made in February 2011.

During the hearing, the landlord's agent was asked several times to explain the calculation of the rental arrears accumulated up to and including December 2010. I found the landlord's agent's replies to be unresponsive to the questions asked. Upon informing the landlord's agent that I was not satisfied the landlord was entitled to the rental arrears from December 2010 the landlord's agent became argumentative and I determined the hearing could not proceed in a productive manner. The conference call was ended shortly thereafter.

## Analysis

Where a landlord seeks to end the tenancy for unpaid rent, as indicated in this application, the landlord must establish that he has served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent as required by the Act. In this case, the landlord did not supply evidence of a 10 Day Notice being served upon the tenant. Rather, the evidence for this proceeding consisted of a 1 Month Notice to End Tenancy for Cause which does not end a tenancy for unpaid rent.

With respect to the monetary claims, I found the landlord did not provide sufficient evidence of the amount claimed or that the tenant was put on notice that the tenancy would end for unpaid rent by way of a 10 Day Notice to End Tenancy for Unpaid Rent.

Further, the landlord appears to have included late fees in calculating the amount of rental arrears when the landlord does not have the legal authority to charge such fees without a written tenancy agreement.

In light of the evidence before me, I found that the landlord has failed to establish an entitlement to an Order of Possession or a Monetary Order for unpaid rent. Accordingly, I dismissed this application. Since the tenant has been served with notice of this hearing and the landlord failed to establish an entitlement to the Monetary Order, this application has been dismissed **without leave** to reapply. This means **the landlord may not pursue these monetary amounts against the tenant again** by way of another application.

## Conclusion

This application was dismissed without leave.

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: April 15, 2011.

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Residential Tenancy Branch