



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, late fees and loss of rent. The tenants did not appear at the hearing. The landlord provided registered mail receipts for each tenant to show that the hearing packages were sent to the tenants at the rental unit on October 25, 2011 via registered mail. The landlord testified that the tenants continue to reside in the rental unit. I was satisfied the tenants have been sufficiently served with notification of this hearing and I proceeded to hear from the landlord without the tenants present.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent, late fees and loss of rent?

### Background and Evidence

The tenancy commenced November 21, 2007 and the rent is currently \$743.00 due on the 1<sup>st</sup> day of every month. On October 2, 2011 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the rental unit door in the presence of a witness. The Notice indicates rent of \$391.50 was outstanding as of October 1, 2011 and has an effective vacancy date of October 13, 2011. On October 13, 2011 the tenants paid \$160.00 and on October 29, 2011 the tenants paid another \$251.00 and \$138.50. The landlord issued receipts for use and occupancy only and applied the \$138.50 towards loss of rent for November 2011. The landlord testified that the tenants also paid the filing fee of \$50.00.

In recognition of the partial payments received from the tenants the landlord reduced the monetary claim to \$604.50 for loss of rent for November 2011 plus \$20.00 late fee for November 2011.

The landlord requested an Order of Possession effective two (2) days after service upon the tenants.

The documentary evidence provided by the landlord included a copy of: the tenancy agreement; the Notice; Proof of Service of the Notice; the tenants' ledger; and registered mail receipts.

### Analysis

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice. Since the Notice was posted on the door it is deemed to be received three days later and the effective date has been automatically changed to read October 15, 2011 pursuant to section 53 of the Act.

Upon review of the tenants' ledger, I am satisfied the tenants were in arrears \$391.00 when the Notice was issued October 2, 2011 and not \$391.50 as indicated on the Notice. However, I do not find the error invalidates the Notice. The tenants paid the arrears of \$391.00 by way of two instalments with the last instalment being October 29, 2011. Since the tenants paid the outstanding rent more than five days after receiving the Notice, and the tenants did not dispute the Notice, I uphold the Notice and find the tenancy ended October 15, 2011. I accept that the landlord has not reinstated the tenancy by way of issuing receipts for use and occupancy only with respect to the payments made October 29, 2011. Therefore, I find the landlord is entitled to regain possession of the rental unit. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

I find the landlord entitled to recover loss of rent of \$604.50 for the month of November 2011 after taking into account the partial payment of \$138.50 on October 29, 2011. I do not grant the landlord's request for a late fee for November 2011 since the tenancy came to an end in October 2011. Provided to the landlord is a Monetary Order in the amount of \$604.50 to serve upon the tenants.

As the landlord has not requested authority to retain the security deposit, it remains in trust to be administered in accordance with section 38 of the Act.

### Conclusion

The tenancy has ended and the landlord is provided an Order of Possession effective two (2) days after service upon the tenants. The landlord is provided a Monetary Order in the amount of \$604.50 for loss of rent for the month of November 2011.

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: November 15, 2011.

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Residential Tenancy Branch