



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on March 31, 2012.

The Landlord appeared at the teleconference hearing and gave affirmed testimony. No one appeared on behalf of the Tenant despite him being served notice of this proceeding in accordance with the *Act*. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### 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, pursuant to sections 55 and 67 of the *Residential Tenancy Act*?

### Background and Evidence

The Landlord affirmed he entered into a written month to month tenancy agreement with the Tenant that was to take effect February 1, 2012 however the Tenant requested to occupy the unit early so on January 27, 2012 the Tenant took possession and agreed to pay partial January 2012 rent in the amount of \$100.00. The Tenant also agreed to pay \$382.00 as the security deposit and \$760.00 as the month rent however the Landlord advised that as of today's date the Tenant has never paid anything towards rent or the security deposit.

The 10 Day Notice to end tenancy was taped to the Tenant's door on March 19, 2012 seeking \$1,620.00 in unpaid rent that was due March 1, 2012.

The Landlord confirmed that the registered mail package with the hearing documents was sent to the Tenant's address and the notice card to pick up the registered mail was placed in their shared mailbox as the Landlord resides at the same address in a

separate unit. The Landlord placed the pickup notice card for the registered mail on the Tenant's door and notice the 10 Day Notice was still taped to the door.

The Landlord was aware the Tenant had not been at the rental unit for some time and then noticed the Tenant had come back to the unit on Good Friday April 6, 2012 for the Easter Weekend. He noted that this is when the Tenant received the 10 Day Notice and the registered mail notice card and he discussed the matter of unpaid rent with the Tenant several times over the course of the Easter weekend. The Tenant kept saying he was going to pay and then never did and now he has left town again to work.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, copies of: the 10 Day Notice, the tenancy agreement, and the move in inspection report form.

Section 71(2)(b) of the Act provides that the Director may make an order that a document has been sufficiently served for the purposes of this Act on a date the director specifies.

I accept the Landlord's affirmed testimony that the Tenant returned home on Friday April 6, 2012 which is the date the Tenant received the 10 Day Notice to end tenancy and the Canada Post notice of registered mail for service of the hearing documents. Therefore, I hereby order the Tenant was sufficiently served the 10 Day Notice to End Tenancy on April 6, 2012 and I further order the Tenant was sufficiently served the notice of hearing documents April 11, 2012, five days after he received the Canada Post Notice, pursuant to section 71(2)(b) of the Act.

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.

I have reviewed the aforementioned and the documentary evidence and I accept that the Tenant has been served with a 10 Day Notice to end tenancy as declared by the Landlord. The notice was received by the Tenant on April 6, 2012, and the effective date of the notice is April 16, 2012 in accordance with section 26 of the Act. I accept the evidence before me that the Tenant has failed to dispute the Notice and failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the Tenant is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, **April 16, 2012**, and I hereby grant the Landlord an Order of Possession.

The Landlord claims for unpaid rent comprised of \$100.00 for January 2012, \$760.00 for February 2012, \$760.00 for March 2012, and \$760.00 for April 2012. The total amount of unpaid rent is \$2,380.00, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the aforementioned, I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the Landlord has met the burden of proof and I award him a monetary claim of **\$2,380.00** for unpaid rent.

**Filing Fee** - The Landlord has succeeded with their application and therefore I award recovery of the **\$50.00** filing fee.

#### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This Order is legally binding and must be served upon the Tenant.

The Landlord's decision will be accompanied by a Monetary Order for **\$2,430.00** (\$2,380.00 + \$50.00). This Order is legally binding and must be served upon the Tenant.

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 18, 2012.

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Residential Tenancy Branch