



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing was scheduled to deal with the landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent. The landlord named two tenants in filing this application; however, neither tenant appeared at the hearing.

I noted that only one tenant was identified on the 10 Day Notice to End Tenancy for Unpaid Rent. The landlord explained that since he purchased the property at the end of February 2012 he has never seen the other named tenant (referred to by initials AG) or received rent from her even though her name appears on the written tenancy agreement given to him by the previous owner. Rather, the rental unit has been occupied by another person, AG's mother (referred to by initials JAG), who paid the landlord money for rent in March 2012. The 10 Day Notice was issued and served upon JAG.

I found, on the balance of probabilities, that JAG has a verbal tenancy agreement with the landlord and having been satisfied that the landlord personally served JAG with the hearing documents on May 1, 2012 I proceed to hear from the landlord in the absence of the tenant. I have also amended this application to name JAG only.

During the hearing the landlord requested the application be amended to include loss of rent for May 2012 since JAG remains in possession of the unit and to seek authorization to retain the security deposit. I have considered these requests in amending this application as the tenant would have a reasonable expectation to pay for occupation of the rental unit in May.

### 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 and loss of rent?
3. Is the landlord authorized to retain the security deposit?

### Background and Evidence

The landlord provided the following undisputed testimony: When the landlord purchased the property in late February 2012 the rental unit was already occupied by the tenant. The tenant is required to pay rent of \$550.00 on the 1<sup>st</sup> day of every month and is required to pay 60% of the gas bills. The landlord is also in possession of a \$275.00 security deposit.

The landlord testified that the tenant paid only \$400.00 of the rent owed for March 2012 and paid nothing for the month of April 2012. On April 12, 2012 the landlord personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) which she signed acknowledging receipt of the Notice. The Notice has a stated effective date of April 22, 2012 and indicates rent of \$700.00 was outstanding as of April 1, 2012 and \$120.00 was outstanding for utilities demanded on "22-04-2012". The landlord testified that after serving the Notice upon the tenant no monies were paid to him and the tenant did not dispute the Notice. Further, the tenant continues to occupy the rental unit.

With respect to the utilities, the landlord testified that the gas bills are generally \$80 - \$100.00 per month and that he gave the tenant copies of the bills. However, the landlord did not provide copies of the bills for this proceeding.

The landlord provided a copy of the 10 Day Notice documentary evidence for this proceeding.

### 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 tenant did not pay the outstanding rent or dispute the Notice I find the tenancy ended on April 22, 2012 and 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 tenant.

The Act requires that a tenant pay rent when due in accordance with the terms of their tenancy agreement, whether it be a written or oral tenancy agreement. Based upon the undisputed evidence before me, I find the landlord entitled to recover unpaid rent of \$700.00 for the months of March and April 2012. I also award loss of rent in the amount of \$550.00 to the landlord for the month of May 2012 since the tenant has not vacated the rental unit.

Where a tenant is required to pay utilities to a landlord, the Act requires that the landlord give the tenant a written demand for payment and if the tenant does not pay the utilities within 30 days then the landlord may include the outstanding utilities on a 10 Day Notice. In the absence of the utility bills I find the landlord has not provided sufficient evidence to demonstrate he served the tenant with requests to pay the utility bills 30 days before the Notice was issued or to support his claim for \$120.00 in unpaid utilities. Therefore, this portion of the landlord's claim is dismissed.

As the landlord was largely successful with this application, I award the filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord.

In light of the above, the landlord is provided a Monetary Order calculated as follows:

March and April unpaid rent	\$ 700.00
April loss of rent	550.00
Filing fee	50.00
Less: security deposit	<u>(275.00)</u>
Monetary Order	\$1,025.00

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as necessary.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,025.00 to serve 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: May 23, 2012.

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Residential Tenancy Branch