



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in repose to the landlords application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of 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 July 18, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

This month to month tenancy started on October 01, 2011. Rent for this unit is \$675.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$337.50 on September 23, 2011.

The landlords' agent testifies that the tenant failed to pay all the rent for July, 2012 on the day it was due. The tenant had a credit on his account from June of \$20.00 and the tenant paid \$150.00 on July 01, 2012. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on July 02, 2012. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states that the tenant owed rent for July, 2012. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on July 14, 2012, 2012. The tenant did not pay the outstanding rent or dispute the Notice within five days. The tenant did pay a further sum of \$320.00 on July 16, 2012 and the landlord's agent testifies that this was accepted for use and occupancy only and did not reinstate the tenancy. Since that time the tenant has failed to pay rent for August, 2012. The total amount of unpaid rent for July is \$185.00 and the landlord also seeks to recover rent for August of \$675.00.

The landlord seeks to recover late fees of \$25.00 for July and August and the tenant was aware these fees would be charged if rent is late as it is documented in the tenancy agreement. The landlord's agent testifies that the landlord has a continuous

advertisement running to rent units in the building and they are hoping to be able to re-rent the unit sometime this month.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

The landlord has provided a copy of the tenancy agreement, a copy of the 10 Day Notice to End Tenancy and the tenants rent ledger in the landlord's documentary evidence.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent.

*Section 26 of the Act states: A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently I find that the tenant has failed to pay rent for July, 2012 and the landlord is entitled to recover rent arrears for July to the sum of \$185.00. I further find the landlord is entitled to recover unpaid rent of \$326.61 from August 01, to August 15, 2012 as the landlord is continuing to advertise the unit the landlord may still be in a position to re-rent the unit for the remainder of August, If the landlord is unable to re-rent the unit the landlord is at liberty to file a new application to recover the balance of August rent from the tenant. Consequently, the landlord will receive a monetary award to the sum of **\$511.61** pursuant to s.67 of the *Act*.

With regard to the landlords claim for late fees; I find the tenant was aware that the landlord will charge late fees as this is documented in the tenancy agreement. Consequently, uphold the landlords claim to recover late fees of \$25.00 for July and August, 2012 to the sum of **\$50.00**.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$337.50** in partial payment of the rent arrears.

As the landlord has been partially successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order for the balance owing as follows:

Outstanding rent	\$511.61
Late fees	\$50.00
Less Security Deposit	(-\$337.50)
Plus filing fee	\$50.00
<b>Total amount due to the landlords</b>	<b>\$274.11</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$274.11**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced 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: August 10, 2012.

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Residential Tenancy Branch