



# 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 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, to keep the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord appeared and affirmed that the Tenant was served notice of this proceeding by registered mail on October 18, 2012. Canada Post receipts were provided in the Landlord's evidence which also included, among other things, a copy of a 10 Day Notice to end tenancy, and a copy of the tenancy agreement.

Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this proceeding, in accordance with the Act, so I continued in the Tenant's absence.

### Issue(s) to be Decided

1. Should the Landlord be granted an Order of Possession?
2. Should the Landlord be issued a Monetary Order?

### Background and Evidence

The Landlord submitted that the month to month tenancy agreement began on September 18, 2012 for the monthly rent of \$800.00. On September 18, 2012 the Tenant paid the Landlord \$1,100.00 in cash which was comprised of \$300.00 for September 2012 rent, \$400.00 as the security deposit, and \$400.00 prepaid for October 1, 2012 rent.

The Landlord stated that when the Tenant failed to pay the remaining \$400.00 for October rent she personally served the Tenant with the 10 Day Notice on October 5, 2012 in the presence of a witness. She stated that the Tenant ripped up the Notice and

was violent towards the Landlord so when the Tenant closed the door she posted a second copy of the Notice on the Door. She advised that the Tenant remains in the unit and has not paid the remainder of October rent and has not paid anything towards November rent.

### Analysis

I accept the undisputed evidence that the Landlord personally served the 10 Day Notice to end tenancy to the Tenant and posted a second copy to the Tenant's door on October 5, 2012. I accept that the Tenant was sufficiently served the Notice on October 5, 2012; therefore, I find the effective date of the Notice is **October 15, 2012**, in accordance with the Act.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent the *Act* stipulates that they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends. In this case the Tenant did not pay the outstanding rent and continues to occupy the rental unit without paying rent for November 2012.

**Order of Possession** – Based on the foregoing, I find that the Landlords have met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act*, and that the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, **October 15, 2012** and must vacate the rental unit to which the notice relates pursuant to section 46(5) of the *Act*. Accordingly, I approve the Landlord's request for an Order of Possession.

**Claim for unpaid rent** - The Landlord claims for unpaid rent of \$400.00 for October 1, 2012, pursuant to section 26 of the *Act* which stipulates that 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 Landlords have met the burden of proof and I award them a monetary claim of **\$400.00** for October 2012 unpaid rent.

**Loss of rent** – As noted above this tenancy ended October 15, 2012, in accordance with the 10 Day Notice; therefore, I find the Landlord is seeking loss of rent for November 2012 given that the Tenant has failed to pay November 1, 2012 rent and is still occupying the unit. The Landlord will not regain possession of the unit until after

service of the Order of Possession and will therefore lose rent for the entire month of November 2012.

Based on the aforementioned I find that the Landlords have succeeded in proving their loss, as listed above, and I approve their claim for **\$800.00** for loss of November 2012 rent.

The Landlords have succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid rent for October 2012	\$ 400.00
Loss of rent for November 2012	800.00
Filing Fee	<u>50.00</u>
<b>SUBTOTAL</b>	\$1,250.00
<b>LESS:</b> Security Deposit \$400.00 + Interest 0.00	<u>-400.00</u>
<b>Offset amount due to the Landlord</b>	<b><u>\$ 850.00</u></b>

#### Conclusion

I HEREBY FIND the Landlords are 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.

A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$850.00**. 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: November 26, 2012.

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Residential Tenancy Branch