



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      OP MNR MNSD FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenant did not appear although she was served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on October 25, 2012.

### Issues

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

### Background and Evidence

This tenancy began on June 18, 2008 when the tenant assumed the original occupant's tenancy which began in September, 2012. The security deposit of \$392.50 was paid on or about September 1, 2002. The current rent is \$876.00 due in advance on the first day of each month. The tenant did not pay rent for October when it was due. On October 11, 2012 the landlord's representative personally served the tenant with a Notice to End Tenancy for non-payment of rent. The tenant did not pay the outstanding rent within five days of receipt of the Notice to End Tenancy and she did not file an application to dispute the Notice to End Tenancy. The tenant paid October's rent on October 31, 2012 and she paid the rent for November on November 7, 2012. The landlord accepted both payments for "use and occupancy only" and the landlord cautioned the tenant that the tenancy would end despite the payments. At the hearing the landlord's representative said that she was prepared to give the tenant until December 31, 2012 to find other accommodation and move out of the rental unit.

### Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the

arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

*Order of Possession* - Based on the above background, evidence and analysis and based upon the landlord's position that it is prepared to end the tenancy on December 31, 2012, I find that the landlord is entitled to an order of possession effective December 31, 2012, after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The tenant's occupancy during the month of December is contingent upon her payment of rent for December.

*Monetary Order and Security Deposit* – The arrears of rent have been paid and there is no basis for a monetary order for unpaid rent. The landlord is entitled to recover the \$50.00 filing fee for this application and I order that the landlord may deduct and retain the sum of \$50.00 from the security deposit that it holds.

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 29, 2012.

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Residential Tenancy Branch