



# 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 response 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. At the outset of the hearing the landlord's agent withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

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 07, 2013. 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.

### Issues 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?

### Background and Evidence

This fixed term tenancy started on July 01, 2012 and was due to end on June 30, 2013. Rent for this unit is \$1,580.00 per month and is due on the 1st of each month. The tenant paid a security deposit of \$790.00 on June 29, 2012.

The landlord's agent testifies that the tenant had informed the landlord in January, 2013 that the tenants brother would be residing in the rental unit and to the landlords knowledge the tenants brother is still in possession of the rental unit although the tenant still remains responsible for the tenancy. The tenant failed to pay all the rent due for January, 2013. The sum of \$1,200.00 was paid on February 04, 2013 leaving an outstanding balance for January of \$380.00. The tenant failed to pay any rent for February, 2013 leaving an outstanding amount of \$1,580.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on February 04, 2013. This was handed in person to the tenant's brother who is an adult residing in the rental unit. This Notice states that the tenant owes rent of \$1,580.00.00 which was due on February 01, 2013. The landlord's agent testifies that they omitted to include the unpaid rent of \$380.00 for January on this Notice. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on February 14, 2013. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has failed to pay rent for March and April, 2013. The total amount of outstanding rent is now \$5,120.00.

The landlord requests an Order to retain the tenants' security deposit in partial payment towards the rent arrears and a Monetary Order for the balance. The landlord also requests to recover the \$100.00 filing fee from the tenant. The landlord requests 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 copies of the e-mail correspondence between the landlord's agent and the tenant.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. 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 January, February and March, 2013 to the sum of **\$3,540.00**. With regards to the landlords claim to recover unpaid rent for April, 2013; as the landlord may still be able to re-rent the unit for part of April I am only prepared at this time to award half a month's rent for April of **\$790.00**. The landlord is at liberty to reapply for any loss of rental income if the landlord is unable to re-rent the unit from April 15, 2013. Consequently, the landlord will receive a monetary award to the sum of **\$4,330.00**.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$790.00** in partial payment of the rent arrears.

As the landlord has been largely successful in this matter, the landlord is also entitled to recover the **\$100.00** 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	\$4,330.00
Less Security Deposit	(-\$790.00)
Plus filing fee	\$100.00
<b>Total amount due to the landlords</b>	<b>\$3,640.00</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 largely in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$3,640.00**. 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 upon 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: April 02, 2013

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Residential Tenancy Branch

