

## **Decision**

**Dispute Codes:** MNR, OPR, MNSD, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on a Notice to End Tenancy for Unpaid Rent dated August 6, 2008 with an effective date of August 16, 2008, a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution and Notice of Hearing in person on August 18, 2008, the Tenant did not appear.

### **Issue(s) to be Decided**

According to the application, the landlord was seeking an Order of Possession and a monetary order claiming \$1,790.00 for rental arrears from July 2008.

The issues to be determined based on the testimony and the evidence are:

(1) Whether the landlord is entitled to an Order of Possession under section 55 of the Act, based on the 10-Day Notice to End Tenancy dated August 6, 2008. This determination is dependant on answers to the following questions:

- Has the Landlord provided proof that the tenant was in arrears for rent owed?
- Did the tenant fail to pay all arrears within five days of service of the Notice to End Tenancy under section 46 of the Act ?

- Was this tenancy reinstated by the tenant paying and the landlord accepting payment of the arrears prior to the hearing?

(2) Whether the landlord is entitled to monetary compensation for rental arrears owed and loss of rent under section 67 of the Act. This determination is dependant upon answers to the following question:

- Has the landlord submitted proof that the specific amount of money being claimed is validly owed by this tenant?

### **Background and Evidence**

The landlord testified that the tenant has been repeatedly falling behind in payments and then catching up on delinquent rent each month by paying the outstanding balance late. The landlord submitted into late evidence a copy of the 10-Day Notice to End Tenancy dated August 6, 2008 which was served in person to the tenant on the same date. The landlord also submitted into late evidence a copy of the credits and debits to the tenant's rental account. The landlord testified that the rent was \$895.00 per month and that after the application was filed on August 18, 2008, the tenant eventually paid the rent owed for the month of June 2008 on or around June 28, 2008. The tenant also paid the rent late for the month of July 2008, and August 2008 and that by the end of August owed arrears of \$150.00. The tenant then paid \$570.00 towards the \$895.00 rent for September, 2008, leaving an additional \$325.00 unpaid for the month of September 2008. This would make the total amount of arrears \$475.00. The landlord testified that the tenant was issued rent receipts for "use and occupation only" for any payments made and that the tenancy was not reinstated. The landlord testified that in addition to rent owed, the tenant is responsible under the tenancy agreement to pay \$25.00 late fee, which would bring the debt up to \$500.00.

### **Analysis**

### Order of Possession

Based on the testimony of the landlord, I find that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession under the Act.

### Monetary Order

I accept the landlord's testimony regarding the rent owed. However, in regards to the \$25.00 late payment fee, I find that this claim is not supported. Although section 7(1) (d) of the *Residential Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent, I note that section 72(2) of the *Regulation* prohibits the charge of this fee unless the tenancy agreement between the parties specifically provides for that fee. I note that the Landlord has failed to submit a copy of the tenancy agreement into evidence verifying that the parties had both agreed to the late fee as a term of the tenancy agreement. Therefore I find that the landlord has failed to meet the landlord's burden of proof to prove this claim. Given the above, this portion of the claim is dismissed.

I find that the landlord has established a total monetary claim of \$525.00 comprised of \$150.00 outstanding rent owed for the month of August 2008, \$325.00 outstanding rent owed for the month of September 2008 and the \$50.00 fee paid by the Landlord for this application. I order that the landlord retain the security deposit and interest of \$449.39 in partial satisfaction of the claim leaving a balance due of \$75.61.

**Conclusion**

Based on the above facts I find that the Landlord is entitled to an Order of Possession and I hereby issue the order 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.

Based on the testimony and evidence presented during these proceedings, I hereby grant the landlord a monetary order under section 67 for \$75.61. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

September 11, 200

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