

## **DECISION AND REASONS**

### **Dispute Codes:**

*OPR, MNR, MNSD, FF.*

### **Introduction**

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order pursuant to Section 67;
- An order of possession pursuant to Section 55;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

### **Issues to be decided**

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order to recover unpaid rent, the filing fee and to retain the security deposit in partial satisfaction of this claim?

### **Background and Evidence**

I find that the Notice to End Tenancy dated May 16, 2008 was served on the Tenant on May 16, 2008 by handing it him. The notice of hearing dated November 13, 2008 was served to the tenant on November 18, 2008 by registered mail. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The landlord testified that the tenancy started on July 01, 2007 and the tenant paid a security deposit of \$350.00. The monthly rent is \$770.00 due in advance on the first day of the month and includes utilities. In September, 2007, the tenant requested the landlord to accept rent in instalments and the landlord agreed to do so. The landlord stated that the tenant paid instalments every week but kept falling further behind on rent

as the amount of the instalments varied and were not enough to cover the rent he owed. On May 01, 2008, the tenant owed 3230.00 and the landlord served him with a notice to end tenancy effective May 16, 2008. The tenant promised to catch up with rent and continued to make instalments, but did not pay the entire amount that he owed. The landlord has submitted into evidence a statement of the tenant's account which is a record of the amounts paid and owed by the tenant.

The tenant now owes \$6220.00 which includes rent for December, 2008 and the landlord has applied for a monetary order to recover the amount owed along with \$100.00 which is the filing fee for this application. During the hearing, the landlord withdrew his application to retain the security deposit. The tenant continues to occupy the rental unit and the landlord is making a claim for an order of possession effective two days after service on the tenant.

### Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date. The Tenant did not pay the amount he owed within five days of receiving the notice to end tenancy nor did he make application pursuant to Section 46 to set aside the Notice to End a Residential Tenancy and the time to do so has expired. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord is entitled to rent owed in the amount of \$6220.00. I find that the landlord is also entitled to the recovery of the filing fee in the amount of \$100.00. I grant the landlord a monetary order under section 67 of the *Residential Tenancy Act* for the amount due of \$6320.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord the following orders:

- A monetary order in the amount of **\$6320.00**
- An order of possession effective two days after service on the tenant.

Dated December 03, 2008.

---

Dispute Resolution Officer