

DECISION

Dispute Codes

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Issues to be Decided

The matters to be decided include the request by the Landlord for an order of possession as a result of non-payment of rent. The Landlord has requested retention of the security deposit paid by the Tenants, plus filing fee cost.

Background and Evidence

The Landlord attended the dispute resolution hearing and provided affirmed testimony. The Landlord testified that the Tenants were each separately serviced with notice of this hearing via registered mail sent on December 18 2008 to the rental unit address. The notice of hearing is deemed to have been served to the Tenants effective within 5 days, therefore I have determined that notice of this hearing was received by the Tenants on December 24 2008. The Tenants did not attend this hearing.

The Landlord testified that on December 8 2008 he personally posted a copy of a 10 day notice to end tenancy for unpaid rent on the door of the rental unit. The Landlord stated that he also slipped a copy of the notice to end tenancy under the door of the rental unit. The notice to end tenancy for unpaid rent indicates a vacancy date of December 30 2008, within the required ten day period required under the Act.

The Landlord stated that as of last week the Tenants remained in the rental unit. He is unsure if they continue to reside in the rental unit and has not yet advertised for new tenants as he needs to confirm the date the current tenants will move out.

The Landlord testified that the tenancy commenced on February 1 2008, that a deposit of \$400.00 was paid on February 1 and that rent of \$800.00 was due on the first of each month. The Landlord states the Tenants paid \$740.00 in November and have not paid anything further. The Landlord is requesting rent arrears of \$860.00 for November arrears and December rent. The Landlord is also requesting loss of revenue of \$1600.00 for the months of January and February 2009, for a total of \$2460.00 in losses. The Landlord also requests filing fee costs of \$50.00.

Analysis

Section 90 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant received the Notice to End Tenancy on December 11 2008.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the Tenant is deemed to have received this Notice on December 11 2008, I find that the earliest effective date of the Notice is December 21 2008.

Section 26(1) of the *Act* stipulates, in part, that a tenant must pay rent when it is due unless the tenant has a right under the Act to deduct all or a portion of the rent. In the circumstances before me, there is no evidence to indicate that the Tenant has the right to deduct any portion of the rent. I therefore find that the Tenant failed to pay the rent that was due for November, December and January in the amount of \$1660.00. Section 46(1) of the *Act* stipulates, in part, that a landlord may end a tenancy if the tenant fails to pay rent that is due. I further determine that the Landlord is entitled to a portion of revenue for the loss of February 2009 rent in the amount of \$400.00. The *Act* states that a Landlord must do whatever is reasonable to minimize the damage or loss, therefore one half of the rental amount for the month of February is reasonable.

Conclusion

After considering all of the written and oral evidence submitted at this hearing, I find that the Landlord has the right to end this tenancy, as the Tenant did not pay rent for November, December and January.

I find that the Landlord has established a total monetary claim of unpaid rent comprised of arrears of \$60.00 for November, rent for December 2008, January 2009, rental income loss of \$400.00 for February 2009 and the \$50.00 fee paid for this application, for a total of \$2060.00. I order that the Landlord retain the deposit and interest of \$405.59 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$1654.41. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated January 20, 2009.
