



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION**

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

### **Introduction**

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

- An order of possession pursuant to Section 55;
- A monetary order for rent owed by the tenant, pursuant to Section 67;
- A monetary order to retain the security deposit in partial satisfaction of the claim, pursuant to Section 38;
- An order to recover the cost of filing this application, pursuant to Section 72.

The ten day notice to end tenancy dated December 05, 2008 was served on the tenant, by posting it on the front door, on December 05, 2008. Both parties attended the hearing and were 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.

### **Issues to be decided**

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

### **Background and Evidence**

The landlord testified that the tenancy started on October 21, 2008. The monthly rent is \$850.00 due in advance on the first day of the month. On October 21, 2008, the tenant paid a security deposit of \$425.00. The tenant failed to pay rent on December 01, 2008, and paid partial rent in the amount of \$417.42 on December 19, 2008. The tenant continues to occupy the rental unit and has not paid rent for January 2009.

The tenant testified that he was assaulted by a maintenance staff member who picked his front door lock, attempted to set fire to the tenant's carpet and stole a weapon from the apartment. The tenant stated that the tenant is pursuing legal action against the landlord and hence did not pay rent on the advice of the tenant's lawyer.

The landlord is applying for an order of possession and a monetary order in the amount of \$1237.58 which consists of the balance of rent for December in the amount of \$387.58 and rent for January in the amount of \$850.00. The landlord is also applying to recover the filing fee of \$50.00 for a total of \$1287.58.

### **Analysis**

The tenant received the notice to end tenancy for unpaid rent, on December 05, 2008 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application pursuant to Section 46 to set aside the Notice to End Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. I find that the landlord is entitled to a total of \$1287.58. I order that the landlord retain the security deposit and accrued interest of \$426.25 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$861.33. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

I grant the landlord an order of possession effective **two** days after service on the tenant and a monetary order in the amount of **\$861.33**.

Dated January 15, 2009.