



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, MND, FF.

Introduction

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

- A monetary order to recover unpaid rent, damage to the unit and compensation for loss, 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.

The notice of hearing dated December 11, 2008 was served to the tenant on December 12, 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.

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, damages and to retain the security deposit in partial satisfaction of this claim?

Background and Evidence

The landlord testified that the tenancy started on October 01, 2008 and the tenant paid a security deposit of \$725.00 on that day. The monthly rent is \$1450.00 due in advance on the first day of the month. In December, the tenant failed to pay rent and was served with a ten day notice to end tenancy on December 02, 2008 with an effective date of December 12, 2008. The landlord filed this application on December 11, 2008.

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. The tenant has also

failed to pay rent for January and the landlord is applying for a monetary order to recover rent for December 2008 and January 2009.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. I find that the notice to end tenancy was valid and 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 the tenant 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 \$2900.00 for December and January. I also find that the landlord is entitled the recovery of the filing fee in the amount of \$50.00. I order that the landlord retain the security deposit and interest of \$727.73 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of \$2222.27. 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 **\$2222.27**.

Dated January 13, 2009.