



Dispute Resolution Services

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

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:

- 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 22, 2008 was served on the tenant, in person, on December 22, 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 June 01, 2003. The monthly rent is \$925.00 due in advance on the last day of the month. The landlord stated that the tenant has paid rent late on several occasions and has submitted into evidence, documentation to support this. The tenant failed to pay rent on December 01, 2008, and was issued a ten day notice to end tenancy.

The tenant paid partial rent in two instalments on January 02 and 20, and owes \$65.00 for December 2008. The tenant continues to occupy the rental unit and has not paid rent for January or February 2009. The tenant agreed that rent was owed in the amount

of \$65.00 for December 2008, \$125.00 for January 2009 and \$925.00 for February 2009, for a total of \$1115.00.

The landlord is applying for an order of possession and a monetary order in the amount of \$1115.00 which consists of the balance of rent owed by the tenant. The landlord is also applying to recover the filing fee of \$50.00 and to retain the security deposit for damages and repairs. The landlord has not submitted any evidence to support the landlord's claim for damages.

During the hearing the landlord stated that he would allow the tenancy to continue if the tenant paid the outstanding rent by February 04, 2009. The landlord has requested for an order of possession effective two days after service on the tenant and stated that the landlord will not serve the notice on the tenant, if the tenant pays the outstanding rent of \$1115.00 by February 04, 2009.

Analysis

The tenant received the notice to end tenancy for unpaid rent, on December 22, 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 \$1165.00 and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord has not submitted any evidence to support the landlord's claim for damage to the hardwood floors and for painting and cleaning the suite. Hence this portion of the landlord's claim is dismissed.

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 **\$1165.00**.

Dated February 02, 2009.

Dispute Resolution Officer