



# 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 unpaid rent, pursuant to Section 67;
- An order to retain the security deposit in partial satisfaction of the monetary claim, 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 January 20, 2009 was served on the tenant on January 20, 2009, 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, retain the security deposit and recover the filing fee?

### **Background and Evidence**

The landlord testified that the tenancy started on March 01, 2007 and the tenant paid a security deposit of \$450.00. The monthly rent is \$900.00 due in advance on the first day of the month. A clause in the tenancy agreement allows the landlord to collect a late fee of \$25.00 and an NSF fee of \$25.00. The tenant failed to pay rent and the landlord issued a ten day notice to end tenancy, on January 08, 2009.

The tenant paid rent on January 19, 2009 and the landlord issued a receipt for use and occupancy only. The tenant owes \$290.00 for February and the landlord is claiming

loss of income for March (\$450.00) as the tenant is still in occupation of the unit. The landlord is also claiming \$50.00 in late fees and NSF fees for February and \$50.00 for the filing fee, for a total of \$840.00. The landlord has applied 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. The tenant received the notice to end tenancy for unpaid rent, on January 008, 2009 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 a residential 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. The Order may be filed in the Supreme Court for enforcement.

I find that the landlord is entitled to loss of income for March in the amount of half months rent (\$450.00). Hence the landlord has established a claim for \$840.00 for unpaid rent, loss of income, late fees, NSF fees and the filing fee. I order that the landlord retain the security deposit and interest of \$458.30 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 \$381.70. 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 **\$381.70**

Dated February 27, 2009.

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Dispute Resolution Officer