

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant seeking an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent.

Service of the hearing documents was done in accordance with section 89 of the *Act*, served by the Tenant to the Landlord's Agent in person on May 24, 2009, at the Agent's office.

The Landlord, the Landlord's Agent and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

Is the Tenant entitled to an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent under Section 46(4) of the *Residential Tenancy Act*?

### Background and Evidence

The tenancy is a month to month term which commenced on September 1, 2008. The tenant paid a security deposit in the amount of \$437.50 on August 24, 2008 and rent in the amount of \$875.00 is due on the first of each month.

The Landlord's Agent testified that when the Tenant failed to pay May rent a 10 Day Notice to End Tenancy was served to the Tenant by the Landlord's Agent on May 20,

2009 at the rental unit. The Tenant confirmed receipt of the 10 Day Notice to End Tenancy.

The Landlord advised that the Tenant has failed to pay May and June, 2009 rent for a total arrears of \$1,750.00.

The Tenant testified that he was in receipt of WCB and now that the WCB payments have ended he has applied for Employment Insurance (EI) Benefits but that he has not received payment from EI as of yet which is why he has failed to pay his rent.

The Landlord has requested an Order of Possession for as soon as possible as he fears the Tenant will continue to occupy the rental unit.

### Analysis

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the Tenant.

**Order of Possession** - I find that the Landlord has met the requirements for the 10 day notice to end tenancy pursuant to section 46(1) of the *Act* and, that the tenant failed to pay the rent within 5 days after receiving this notice. Based on the aforementioned I hereby dismiss the Tenant's application without leave to reapply.

I hereby grant the Landlord's request to issue an Order of Possession effective 2 days upon service to the Tenant

In regards to the landlord's claims and evidence relating to unpaid rent and damages to the rental unit, I am not able to neither hear nor consider the Landlord's claim during these proceedings as this hearing was convened solely to deal with the Tenant's application. That being said, I must point out that the Landlord is at liberty to make their

claims in a separate application and to resubmit their evidence if the Landlord wants to pursue requesting a Monetary Order under section 67 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 30, 2009.

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Dispute Resolution Officer