



# **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

MNR

OPR

MNSD

FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated May 5, 2009, a monetary order for rent owed and an order to retain the security deposit in partial.

Both parties appeared and gave testimony in turn.

### **Issue(s) to be Decided**

The landlord is seeking an Order of Possession. The landlord is also seeking a monetary order claiming unpaid rent of \$1,100.00 each month for May, June and July 2009.

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and loss of rent

Whether or not the landlord was entitled to bank fees in the amount of \$35.00 for costs relating to the tenant's returned cheque.

### **Background and Evidence**

The landlord submitted into evidence a copy of the 10-Day Notice to End Tenancy dated May 5, 2009 with effective date of May 15, 2009, a copy of the tenancy agreement, a copy of the returned cheque. The landlord testified that the tenancy began on April 1, 2009, at which time the tenant paid a security deposit of \$550.00. The landlord testified that the tenant failed to pay rent for the months of April 2009, because the tenant's cheque failed to clear. The tenant did not pay the arrears within the required 5 days and since that time accrued additional debt of \$1,100.00 for May, 2009, \$1,100.00 for June 2009, \$1,100.00 for July 2009. The landlord testified that under the tenancy agreement, the tenant also owes \$35.00 for the returned cheque. The landlord testified that the tenant eventually paid \$375.00 towards the debt leaving a balance of \$4,060.00. The landlord testified that the tenant has not vacated the unit and the landlord has requested an Order of Possession.

The tenant testified that the arrears were owed as stated by the landlord.

### **Analysis**

Based on the testimony of the parties, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to receive \$725.00 remaining rent for April, 2009, \$1,100.00 rent for May 2009, \$1,100.00 rent for June 2009, \$1,100.00 , rent for July 2009.

In regards to the late fees, I note that the tenancy agreement submitted into evidence shows that \$35.00 will be charged for late fees and \$35.00 will be charged for returned cheque fees. However, Section 7 of the Residential Tenancy Regulation specifies that a landlord may not charge an administration fee of more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. Accordingly I find that I must reduce the claim to comply with the Act.

I find that the landlord has established a total monetary claim of \$4,175.00 comprised of \$4,025.00 rental arrears, \$25.00 late fees each month for April, May, June and July 2009 amounting to \$100.00 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$550.00 in partial satisfaction of the claim leaving a balance due of \$3,625.00.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord an order under section 67 for \$3,625.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

July, 2009

Date of Decision

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Dispute Resolution Officer