



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a monetary claim due to non-payment of rent by the tenant. The landlord stated that on June 17, 2009 the tenant was served with notice of this application and hearing by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

I accept the landlord's oral submission, in the absence of any documentary evidence, that the tenant was served by registered mail and I proceeded with the hearing in the tenant's absence.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

This tenancy began on June 1, 2006 for the monthly rent of \$1,000.00 and a \$1,000.00 pet and security deposit. The landlord stated that the rent is currently \$1,035.00, but did not provide documentation that a proper notice of rent increase was given to the tenant.

The landlord provided documentary evidence that the tenant was served with a 10 day Notice to End Tenancy for Unpaid Rent on May 28, 2009 by registered mail. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

The landlord stated that the tenant owed \$1,540.00 as of May 1, 2009 and has subsequently failed to pay rent for June and July for a total of \$3,610.00 in rental arrears. The landlord did not provide any documentary evidence in support of the

Residential Tenancy Branch
Ministry of Housing and Social Development

allegation that the tenant failed to pay \$506.00 prior to May 1, 2009 in addition to the monthly rent of \$1,035.00.

The landlord seeks an Order of Possession and a monetary claim due to the tenant's breach of the *Act*.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on June 3, 2009, and the effective date of the notice is amended to June 13, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. I 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.

I find that the landlord has failed to establish the claim that the tenant owed the sum of \$1,540.00 on May 1, 2009. Therefore, in the absence of any evidence from the tenant, I only accept that the landlord has lost three months rent at \$1,035.00 or \$3,105.00 due to the tenant's failure to pay rent for May, June and July 2009.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$3,155.00** comprised of \$3,105.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposit and interest held of \$1,033.28 in partial satisfaction of the claim and grant an order for the balance due of **\$2,121.72**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

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*.

I have granted the landlord's application and issued an Order of Possession and a monetary claim due to the tenant's breach of the tenancy agreement and *Act*.

Dated: July 24, 2009.

Dispute Resolution Officer