



Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes: *OPR, CNR, MNR, MNSD, MNDC, RP, FF*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for an order to cancel the notice to end tenancy and an order for repairs to the rental unit.

The tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order for unpaid rent and the filing fee and to retain the security deposit?

Background and Evidence

The landlord and tenant entered into a tenancy agreement on August 01, 2007 for a fixed term ending July 31, 2009. The monthly rent is \$2,500.00 payable on the first of the month. The tenant paid a security deposit of \$1,200.

The tenant failed to pay rent for April, May and June 2009. On June 02, 2009 the parties entered into an agreement, whereby the tenant would pay the outstanding rent in two instalments. The tenant failed to pay the second instalment due on June 15, 2009 and on June 19, 2009, the landlord served the tenant with a ten day notice to end tenancy.

The tenant has also not paid rent for July 2009 and continues to occupy the rental unit. The landlord has applied for an order of possession effective two days after service on the tenant and for a monetary order for the outstanding rent for May, June and July in the amount of \$7,500.00 plus the filing fee of \$100.00.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept his evidence in respect of the claim. Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution.

If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date.

The tenant received the notice to end tenancy on June 19, 2009 and did not pay overdue rent within five days of receiving the notice. The tenant applied to dispute the notice but did not attend the hearing. Therefore, the notice is upheld and 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.

In the absence of evidence to the contrary, I find that the landlord has established a claim of \$7,500.00 for unpaid rent and \$100.00 for the filing fee. I order that the landlord retain the security deposit of \$1,200.00 and interest of \$25.67 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 \$6,374.33. 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. I also grant the landlord a monetary order in the amount of **\$6,374.33**

Dated July 31, 2009.

Dispute Resolution Officer