



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of possession, a Monetary Order for unpaid rent, and damage or loss under the Act, regulations or tenancy agreement and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, given to the tenant in person on July 21, 2009. The tenant was deemed to be served the hearing documents on the same day as per section 90(a) of the *Act*.

The landlords appeared, gave their testimony, and were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Did the tenant pay a security deposit within 30 days and if so was the one month notice valid?
- Is the landlord entitled to an Order of possession on either Notice?
- Whether the landlord is entitled to a Monetary Order to recover the unpaid rent and filing fee

Background and Evidence

This tenancy started on June 01, 2009. The tenant moved in a few days earlier than this but the landlord did not charge her any additional rent. This is a month to month tenancy and rent for this unit is \$795.00 per month due on the 1st of each month. The tenant has not paid a security deposit of \$397.50 within 30 days of moving into the property.

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The landlords testify that the tenant paid \$700.00 towards her rent for June which left a balance owing of \$95.00. On June 09, 2009 the landlord issued the tenant with a One Month Notice to end the tenancy citing the reasons as 'the tenant had not paid the security deposit within 30 days as required by the tenancy agreement'. This Notice required the tenant to vacate the rental unit by July 10, 2009. In July 2009 the rent was paid by welfare. On July 07 the landlord issued the tenant with a 10 Day Notice to End Tenancy for unpaid rent of \$95.00 for the outstanding amount for June, 2009. This was given to the tenant in person and was deemed to have been served on the same day. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on July 18, 2009. The landlord testifies that the tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord applied for Dispute Resolution on July 20, 2009. Since that time the tenant has not paid rent for August and September, 2009 of \$1,590.00 and the landlord has amended her application to include a Monetary Order for rent arrears for August and September. The total balance of rent arrears is \$1,685.00.

Analysis

The tenant did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for June, August and September, 2009 of **\$1,685.00**.

I find that the landlord issued the One Month Notice to End tenancy prematurely due to the reasons given on the Notice that the tenant had not paid the security deposit with 30 days as required by the tenancy agreement. As this Notice was issued on June 09 and the tenancy did not start until June 01 the tenant still had until the end of June to pay the security deposit. Therefore, I overturn the landlords One Month Notice to End Tenancy.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 88 of the *Residential Tenancy Act*. 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 pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.



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Based on the foregoing, I find that the tenant is conclusively presumed, under s. 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

As the landlord has been successful in this matter, they are also entitled to recover the \$50.00 filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for June, August and September, 2009	\$1,685.00
Total amount due to the landlord	\$1,735.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,735.00**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

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 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: September 04, 2009.

Dispute Resolution Officer