



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of the filing fee. At the outset of the hearing the landlord withdrew their application for a Monetary Order for damages to the rental unit.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on July 23, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on July 28, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's property manager appeared, gave affirmed testimony, was provided the opportunity to present his 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

- Whether the landlord is entitled to an Order of Possession?
- Are there arrears of rent and if so, how much?
- Is the landlord entitled to a Monetary Order for damage to the rental unit?
- Whether the landlord is entitled to a Monetary Order to recover the filing fee?



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Background and Evidence

This tenancy started on April 01, 2008. This is a month to month tenancy and rent is \$925.00 per month due on the 1st of each month. The tenant paid a security deposit of \$462.50 on March 15, 2008.

The tenant did not pay rent for May or June, 2009. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on June 02, 2009. This was posted on the tenants door on June 02, 2009 and is deemed to have been served Three days after posting. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on June 15, 2009. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord applied for Dispute Resolution on July 23, 2009. Since the 10 Day Notice was served the tenant has not paid rent for July, August or September 2009 and the landlord's agent has requested to amend his application to include a Monetary Order for rent arrears for August and September. This amendment was been allowed.

The tenancy agreement has a separate clause that states the landlord will charge the tenant \$25.00 in late fees for each month the rent is late. To date the tenants rent owes \$125.00 in late fees.

The landlord also states that the tenant is living with another adult at the rental unit without the landlords' permission and his name has not been included on the tenancy agreement. There is a clause in the tenancy agreement which states; 'when a person not listed on the tenancy agreement, resides in the premises for a period in excess of two weeks he shall be deemed to be occupying the premises in contrary to this agreement and without the right or permission of the landlord'. The tenant is still deemed to be the tenant residing at the rental property.

The landlord has requested an Order of Possession to take effect as soon as possible.

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 May, June, July, August and September 2009 of \$4,625.00. **I order** the landlord pursuant to s. 38(4) of the Act to keep the tenant's security deposit in partial payment of the rent arrears.

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 five months	\$4,625.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$468.03)
Total amount due to the landlord	\$4,331.97

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.

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.

Conclusion



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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 **\$4,331.67**. 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 11, 2009.

Dispute Resolution Officer