



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 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.

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 24, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on July 29, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and her agent appeared, gave affirmed testimony, 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?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- 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. Rent for this unit is \$1,400.00 per month due on the 1st of each month. The tenant paid a security deposit of \$700.00 on May 27, 2009.

The landlord testifies that the tenant paid partial rent on June 23, 2009 of \$1,000.00. The tenant did not pay rent for July, 2009 of \$1,400.00. The landlord served the tenant with a 10 Day Notice to End the Tenancy for unpaid rent on July 16, 2009. This was posted under the tenants' door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on July 29, 2009. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for August or September, 2009. The landlord served the tenant with another 10 Day Notice to End Tenancy for unpaid rent on August 27, 2009. The tenant did not pay the rent or dispute this Notice. The landlord has requested to amend his application to recover the unpaid rent for these months also. The total amount of unpaid rent is now \$4,600.00. I have allowed the landlords amended claim for these months due to the time factor for the hearing date.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears and recover the filing fee for this application. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenant did not appear at the hearing, despite having been given 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, July, August and September, 2009 of \$4,600.00. 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, he is 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, July, August and September, 2009	\$4,600.00
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Less security deposit	(-\$700.00)
Total amount due to the landlord	\$3,950.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 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 section 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

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$4,600.00**. The order must be served on the respondent 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 Respondent 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 14, 2009.

Dispute Resolution Officer