



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

The hearing that was due to be held on July 29 was reconvened to today's date to allow the Respondents opportunity to provide additional evidence to support their claim that they had paid some rent owed to the landlord.

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*; the tenant appeared for the hearing on July 29, 2009. The reconvened hearing documents were sent to both parties to the addresses provided at the time of the first hearing. The tenants are deemed to have been served five days after these were posted by the residential tenancy Office

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her 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

- Is the Landlord is entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order to recover unpaid rent and the filing fee?
- Is the landlord is entitled to keep all or part of the security deposit in partial payment towards any rent arrears?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

Background and Evidence

This tenancy started on March 20, 2008. Rent is \$1,595.00 per month payable on the 1st of each month. The tenants paid a security deposit on March 18, 2008 of \$797.50. On May 01, 2009 the landlord reduced the rent to \$1495.00 to help the tenants as they were experiencing financial difficulties.

The tenants did not pay rent when it was due on April 01 and a 10 Day Notice to End Tenancy was issued on April 29. The tenants failed to pay the outstanding rent within five days and failed to pay the rent due on May 01, 2009. On May 04 the landlord issued another 10 Day Notice to End Tenancy. The tenants did not make a rent payment and on June 01, 2009 they again failed to pay their rent. On June 04, 2009 the landlord issued another 10 Day Notice to End Tenancy. This was handed to the tenants in person and was deemed to have been served on the same day. The Notice states that the tenant has five days to pay the outstanding rent, apply for dispute resolution or the tenancy will end. Since that time the tenants have not paid rent for July, August or September, 2009. However, as the landlord has not amended their application they are claiming rent arrears for April of \$1,595 and rent arrears for May and June at the reduced rent of \$1,495.00.

The tenancy agreement contains a clause that informs the tenant that the landlord will charge \$25.00 for any month the rent is late. In this instance the landlord is claiming late fees for April, May and June, 2009 to the amount of \$75.00.

At the first hearing held on July 29, 2009 the tenants claim that they paid the landlord \$1,000.00 towards rent arrears on June 03, 2009. The landlord disputes this rent payment.

The landlord seeks an Order of Possession to take effect as soon as possible. They also request an Order for them to keep the tenants security deposit in partial payment of the rent arrears.

Analysis

The tenants did not appear at the reconvened hearing, despite having been sent a Notice of the hearing; the tenants were given the opportunity to provide additional evidence to support their claim that they paid \$1,000.00 to the landlord for rent arrears on June 03, 2009. The tenants have not provided any additional evidence. The landlords' rent ledgers show the rent that has been paid by the tenants and does not include the sum of \$1,000.00 the tenants claim they paid. Therefore, I find that the landlord is entitled to recover rent arrears for April, May and June, 2009 of \$4,585.00 plus \$75.00 for late fees pursuant to s. 67 of the *Act*. 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 April, May and June, 2009	\$4,585.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$806.95)
Total amount due to the landlord	\$3,903.05

I accept that the tenants were served the 10 Day Notices to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notices state that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants 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 tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the last Notice and grant the landlord an order of possession.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

I also find the landlord is at liberty to reapply for any other outstanding rent owed to them by the tenants.

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 **\$3903.05**. The order must be served on the tenants 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 tenants. This order must be served on the tenants 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 17, 2009.

Dispute Resolution Officer