



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MNR, MNSD, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession for unpaid rent and for a breach of an agreement with the landlord. a Monetary Order to recover unpaid rent, an Order to keep all or part of the security deposit in partial payment of outstanding rent and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were sent to the tenant on August 07, 2009 by registered mail.

The landlord agent and property manager 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 section 90 of the *Residential Tenancy Act (Act)*.

All of the testimony and documentary evidence was carefully considered. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Whether the landlord is entitled to an Order of Possession?
- Has the tenant breached an agreement with the landlord?
- 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 May 01, 2009. This is a month to month tenancy and rent was \$1,250.00 per month due on the 1st of each month. Due to the tenants hardship with rent



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payments the landlords have reduced the rent to \$1,000.00 per month starting June, 2009. The tenant paid a security deposit of \$625.00 on April 22, 2009.

The tenant paid her rent of \$1,000.00 for July, 2009 by cheque. This cheque was returned for insufficient funds. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on July 25, 2009. This was given in person to the tenant and is 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 August 04, 2009. The tenant did not pay the outstanding rent or dispute the Notice within five days. On August 06 the tenant paid \$1,000.00 for July rent and the landlord accepted this and marked the receipt for use and occupancy only. On August 07 the tenant paid \$1,000.00 for August rent. The landlord accepted this for use and occupancy only. The landlord applied for Dispute Resolution on August 05, 2009. The tenant has not paid rent for September, 2009 of \$1,000.00.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord's agent testifies that the tenant has breached a condition of her tenancy agreement by not paying her rent on time. The landlord has 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 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 September, 2009 of \$1,000.00. **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 September, 2009	\$1,000.00
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Less security deposit and accrued interest	(-\$625)
Total amount due to the landlord	\$425.00

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. The landlord accepted the outstanding rent at that time for use and occupancy only.

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

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 **\$425.00**. 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 22, 2009.

Dispute Resolution Officer