



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 the landlord's application to end the tenancy for unpaid rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord testified the following evidentiary material:

- There was a tenancy agreement which was signed by the parties in May, 2009 for a month to month tenancy beginning June 1, 2009 for the monthly rent of \$750.00 due on 1st of the month and a security deposit of \$375.00 was paid in May, 2009; and
- A 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 5, 2009 with an effective vacancy date of September 15, 2009 due to \$1500.00 in unpaid rent was served to the tenant on September 5, 2009.
- The Notice of Dispute Resolution Hearing was served to the tenant in person on September 10, 2009.

The landlord's witness confirmed the service of both the 10 Day Notice to End Tenancy and the Notice of the Dispute Resolution Hearing.

Testimony by the landlord indicates that the tenant had failed to pay the full rent owed for the months of August and September 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was handed to the tenant on September 5, 2009. The landlord's witness confirmed that the service was completed.

The landlord also testified the tenant moved out of the rental unit by the middle of September, 2009.



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

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 apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed the testimony and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on September 5, 2009, and the effective date of the notice is September 15, 2009. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Based on the foregoing and the testimony of the landlord that the tenant has moved out of the rental unit, 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.

Conclusion

Since the tenant has moved out of the dispute address I dismiss the landlord's application for an Order of Possession.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$1550.00** comprised of \$1500.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposit and of \$375.00 in partial satisfaction of the claim and grant an order for the balance due of **\$1125.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: October 01, 2009.

Dispute Resolution Officer