



Dispute Resolution Services

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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 for an Order of Possession and a monetary order due to 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 and late fees; to keep all or part of the security deposit; and to recover the filing fee from the tenants 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 submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on March 8, 2004 for a fixed term tenancy beginning April 1, 2004 and converting to a month to month tenancy effective September 31, 2004 for the monthly rent of \$1270.00 due on the 1st of the month and a security deposit of \$635.00 was paid on March 8, 2004;
- A copy of a Notice of Rent Increase effective January 1, 2009 – current rent is \$1410.00 per month
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 4 2009 with an effective vacancy date of August 14, 2009 due to \$1805.00 in unpaid rent and \$25.00 in late fees.

Testimony given by the landlord's agent indicates that the tenant had failed to pay the full rent owed for the month of August 2009 and partial month of July and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was placed in the mailbox of the tenant's rental unit on August 4, 2009.

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.

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The tenant testified that she had paid the rent for August in full on August 19, 2009. The landlord's agent confirmed this payment. However, the landlord's agent also confirmed the tenant still owed \$395.00 for July, 2009 and had not paid anything for September and October 2009.

The total arrears are shown in the following table:

Description	Amount
Outstanding rent – July 2009	\$395.00
Outstanding rent – August	\$0.00
Outstanding rent – September + late payment fee	\$1410.00 + \$25.00
Outstanding rent – October + late payment fee	\$1410.00 + \$25.00
Total Outstanding	\$3265.00

The tenant proposed an opportunity to make good on the outstanding rent owed by selling her car. She further testified that she had had some employment issues but that she would soon be back to work fulltime.

The landlord's agent indicated that they had been trying to contact the tenant to try to determine what was going on but the tenant was not responding. The landlord's agent stated that had they had an opportunity to discuss previously they may have been able to work something out but the landlord was no longer willing to continue the tenancy.

When asked why the tenant had not contacted the landlord's agent she testified she didn't think it was her responsibility since a hearing was already scheduled. The tenant could not provide any justification for not contacting the landlord's agent when it was apparent that they would not be able to pay September or October rent either.

Analysis

I have reviewed all evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on August 7, 2009, and the effective date of the notice is amended to August 14, 2009 pursuant to section 53 of the *Act*. Regardless of the fact

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that the tenants paid the rent for August on August 19, 2009 I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*. And that the tenants further compounded the amount of rent overdue by not paying September and October rents when they were due on the 1st of the respective months.

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 Notice.

Conclusion

I find that the landlord is entitled to an Order of Possession 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.

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$3315.00** comprised of \$3265.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposit and interest held of \$657.47 in partial satisfaction of the claim and grant an order for the balance due of **\$2657.53**. 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 06, 2009.

Dispute Resolution Officer