



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 and an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause.

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 to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*. In addition, it will need to be decided if the tenant can have the Notice to End Tenancy for Cause cancelled.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 10, 2009 with an effective vacancy date of September 20, 2009 due to \$700.00 in unpaid rent; and
- A summary of evidence including a listing of a number of issues not related to the Notice to End Tenancy for Unpaid Rent but directly related to the issues of cause outlined in the Notice to End Tenancy for Cause.

The landlord confirmed via testimony that the tenancy began on May 27, 2009 as a month to month tenancy for the monthly rent of \$700.00 per month due on the 1st of the month and a security deposit of \$350.00 paid on May 8, 2009.

The tenant submitted the following evidentiary material:

- A copy of a 1 Month Notice to End Tenancy for Cause which was issued on August 16, 2009 with an effective vacancy date of September 27, 2009 due to significant interference with or unreasonable disturbance of another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk;

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breach of a material term of the tenancy agreement; pet deposit not paid within 30 days.

Documentary evidence and testimony provided by the landlord indicates that the tenant had failed to pay the full rent owed for the months of September and October 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the tenant by the RCMP on September 10, 2009 at 8:55 p.m. The landlord provided documentation confirming that the service was performed by the RCMP.

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 all documentary evidence 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 10, 2009, and the effective date of the notice is September 20, 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, 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.

No documentary evidence was presented by the tenant nor did he attend this hearing.

Conclusion

Despite the landlord's testimony that the tenant has moved out, effective October 5, 2009 I find that the landlord is entitled to an Order of Possession effective **October 6, 2009**. If required, 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 and grant a monetary order in the amount of **\$1450.00** comprised of \$1400.00 rent owed and the \$50.00 fee paid by the Landlord for this application. 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.



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Having found that the Notice to End Tenancy for Unpaid Rent is enforceable and in light of the tenant's absence from this hearing I dismiss the tenant's application to cancel the Notice to End Tenancy for Cause without leave to reapply.

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