

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, OPR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The Landlord served the Tenant with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on August 21, 2009. Under the Act, the Tenant is deemed served five days after mailing. Although the Tenant did not appear at the hearing, I find he has been duly served in accordance with the Act.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Based on the affirmed testimony of the Agent for the Landlord, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent. The Tenant has not paid all the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

According to the Agent for the Landlord, the Tenant vacated the rental unit on or about September 2, 2009.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the Landlord is entitled to an order of possession in these circumstances, the Tenant has vacated the rental unit and therefore, an order of possession is no longer required.

I find that the Tenant has failed to pay rent under the Act and tenancy agreement, and the Landlord is entitled to monetary relief in accordance with section 67 of the Act.

I find the Landlord has established a total monetary claim of **\$1,097.50** comprised of \$997.50 as the rent owed for August and half of September, two late payment fees of \$25.00 each and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$332.38** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$765.12**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy, and vacated the rental unit. Therefore, an Order of Possession is not required.

The Landlord is granted a monetary order for rent due, and may keep the security deposit and interest in partial compensation, and has an order for the balance due.

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 14, 2009.

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Dispute Resolution Officer