



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, 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.

The landlord served the tenant with a copy of the Application and Notice of Hearing by registered mail on September 22, 2009. I find that the tenant was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the tenants' absence.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the landlord entitled to an Order of Possession for unpaid rent?
- 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 filing fee?

Background and Evidence

This tenancy started on June 01, 2009. The rent for this unit is \$770.00 per month due on the 1st of each month. The tenant paid a security deposit of \$385.00 on May 07, 2009.

The landlord testifies that the tenant did not pay her full rent for August, 2009 which left an outstanding balance of \$100.00. The tenant did not pay rent for September, 2009 on the day it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on

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September 08, 2009. This was posted to the tenants' door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on September 17, 2009. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant did not pay rent for October on the day it was due. The tenant did pay \$200.00 on October 01, 2009 and \$300.00 on October 7, 2009. These payments were accepted by the landlord for use and occupancy only. The tenant paid \$700.00 on November 02, 2009 this payment was accepted for use and occupancy only. The landlord has requested to amend his application to recover the unpaid rent for November, 2009. The total amount of unpaid rent is now \$1,210.00. I have allowed the landlord to amend his claim to include Novembers rent.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears. The landlord has also 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 given 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 August, September, October and November 2009 of \$1,210.00. 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, he is 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 August, September, October and November 2009	\$1,210.00
Less security deposit	(-\$385.00)
Total amount due to the landlord	\$875.00



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I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 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. As the Notice was posted to the tenants' door the amended date on the notice would be September 21, 2009. The tenant did not pay the outstanding rent within five days of this date nor apply to dispute the Notice to End Tenancy within five days.

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 and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$875.00**. The order must be served on the respondent 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 Respondent 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: November 05, 2009.

Dispute Resolution Officer