



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent and compensation for damage or loss under the Residential Tenancy *Act* (*Act*), an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

The landlord served the tenants by registered mail on November 04, 2009 with a copy of the Application and Notice of Hearing. Mail receipt numbers were provided in the landlords' documentary evidence. I find that the tenants were properly served pursuant to s. 89 of the *Act* with notice of this hearing. The tenants were deemed to be served the hearing documents on November 09, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*. The hearing proceeded in the tenants' absence.

The landlords' legal representative and her agents' assistant appeared at the hearing. The landlords' representative and agent were provided the opportunity to present their 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 a Monetary Order for loss of income?
- Is the landlord is entitled to an Order of Possession?
- Is the landlord entitled to compensation for damage or loss under the *Act* and if so how much?
- Is the landlord entitled to keep all or part of the security deposit and interest?



Dispute Resolution Services

Page: 2

Residential Tenancy Branch
Ministry of Housing and Social Development

- Is the landlord is entitled to a Monetary Order to recover the unpaid rent and filing fee?

Background and Evidence

This tenancy started on September 10, 2009. The tenants agreed to pay rent of \$2,200.00 per month which was due on the 1st of each month. The tenants paid a security deposit of \$1,100.00 on September 09, 2009.

The landlords' legal representative states that the tenants paid rent for September by cheque but the cheque was returned for insufficient funds. He states that the tenants have not paid rent for October and a 10 Day Notice to End Tenancy was served to the tenants in person and posted on their door on October 22, 2009. This Notice states that the tenants had five days to pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 01, 2009. The tenants have not paid any of the outstanding rent for September or October, 2009 and did not pay rent for November, 2009. The total amount of unpaid rent is now \$5,800.00.

The landlord also seeks to recover the fees paid to her management agent for work done in line with this tenancy to a sum of \$285.00. The landlord also seeks to be compensated for bank fees of \$4.50 for the returned cheque and to recover the registered mailing fees of \$37.01.

The landlord has requested to keep the tenants security deposit in partial payment of the rent arrears and requests to recover the filing fee paid for this application of \$100.00.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I find that the landlord is entitled to recover rent arrears for September, 2009 of \$1,400.00 and for October and November, 2009 of \$4,400.00 pursuant to s.67 of the *Act*. I further 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.

Residential Tenancy Branch
Ministry of Housing and Social Development

I find the landlord is entitled to recover his costs for registered mail for the hearing documents and evidence to an amount of \$37.01 and for the bank charges incurred due to a returned cheque for Septembers rent of \$4.50.

I find the landlord is not entitled to recover the management fees of \$285.00. If a landlord chooses to instruct a manager or agent to act on their behalf then the landlord must bear the costs incurred for this service.

The landlords' total claim is for \$8,000.00 however, I find an error in the landlords total calculations and find the amount actually claimed is \$6,226.51.

As the landlord has been largely successful in this matter, she is also entitled to recover the \$100.00 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 September, October and November, 2009	\$5,800.00
Bank charges	\$4.50
Filing fee	\$100.00
Subtotal	\$5,941.51
Less security deposit	(-\$1,100.00)
Total amount due to the landlord	\$4841.51

I accept that the tenants were 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 tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants have 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.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

Conclusion

I HEREBY FIND in partial favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$4,841.51**. The order must be served on the respondents 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 tenants. This order must be served on the Respondents 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 26, 2009.

Dispute Resolution Officer