



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; for 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 October 28, 2006 for a 1 year fixed term tenancy beginning on November 1, 2006 that converted to a month to month tenancy on November 1, 2007 for the current monthly rent of \$995.00 due on the 1st of the month and a security deposit of \$475.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 2, 2009 with an effective vacancy date of October 12, 2009 due to \$995.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the full rent owed for the month of October, 2009 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served by posting on the door of the tenants rental unit on November 2, 2009.

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 apply to dispute the Notice to End Tenancy within five days. The landlord's agent confirmed in testimony that the tenants have not paid October, November or December 2009 rent.

Analysis

I have reviewed all documentary 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 October 5, 2009, and the effective date of the notice is amended to be October 15, 2009, pursuant to Section 53 of the *Act*. 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 have also failed to pay any subsequent rent.

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.

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 to Section 67 and therefore grant a monetary order in the amount of **\$3,035.00** comprised of \$2,985.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I order the landlord may deduct the security deposit and interest held in the amount of \$489.81 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,545.19**. 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: December 02, 2009.

Dispute Resolution Officer