



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution to end a tenancy for unpaid rent.

Issues(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 March 24, 2009 for a 1 year fixed term tenancy beginning on April 1, 2009 for the monthly rent of \$1725.00 due on the 1st of the month and a security deposit of \$862.50 was paid on March 15, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 9, 2009 with an effective vacancy date of October 19, 2009 due to \$964.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant 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 the notice to the door of the tenant's rental unit on November 9, 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.

In testimony provided at the hearing the landlord's agent confirmed the tenants have on December 1, 2009 paid the full amount owed for October and November 2009. She further testified that the tenants also paid the rent for December 2009 just prior to this

hearing. The agent stated the rent paid today was partially by cheque and partially by cash. The agent has requested an Order of Possession be issued until such time as she can confirm the cheque can be cleared. The tenant agreed to this request.

Analysis

While the tenant's have paid their rent in full they failed to pay October 2009 rent within the 5 days allowed under Section 46 of the Act, once they had received the 10 Day Notice to End Tenancy for Unpaid Rent. As such, I find that they had accepted the notice to end the tenancy.

Because the payment of the rent for October, November and December was all paid within the last 2 days, I find that it is possible that the cheque received by the landlord may not clear. I am satisfied that should it fail to clear the outstanding amount is a part of this current Application for Dispute Resolution, for the purposes of the landlord's request for an Order of Possession.

Except for the landlord's application to recover the filing fee, the landlord may file a separate Application for a Monetary Order for unpaid rent should the tenant's cheque not clear.

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 only in the event that the cheque issued to the landlord for the current arrears does not clear and may be filed in the Supreme Court and enforced as an order of that Court.

I grant a monetary order to the landlord in the amount of \$50.00 for recovery of the filing fee for this Application for Dispute Resolution.

I dismiss the landlord's application for a monetary order for compensation for unpaid rent with 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: December 02, 2009.

Dispute Resolution Officer