



Dispute Resolution Services

Page: 1

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 tenant 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 tenancy began on June 1, 2009 as a month to month tenancy with rent due on the 1st of the month in the amount of \$775.00. A security deposit of \$385.00 was paid on June 1, 2009.

The landlord submitted the following evidentiary material:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 3, 2009 with an effective vacancy date of October 13, 2009 due to \$775.00 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 November, 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the tenant's rental unit door on October 3, 2009 at 4:45 p.m. The landlord's agent confirmed in his testimony the posting was witnessed by a third party.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days. The landlord's agent testified the tenant has not paid any rent for October, November or December 2009, with a total in arrears of \$2,325.00.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with a notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on October 6, 2009, and the effective date of the notice is amended to October 16, 2009, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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 **\$2,375.00** comprised of \$2,325.00 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 \$385.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,990.00**. 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 03, 2009.

Dispute Resolution Officer