

## **DECISION**

Dispute Codes      MNR, MNDC, MNSD, OPR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on October 21, 2009, the Tenants did not appear. Under the Act, the Tenants are deemed served five days after mailing. I find the Tenants have been duly served under the Act.

### Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

### Background and Evidence

Based on the affirmed testimony of the Agent for the Landlord, I find that the Tenants were served with a Notice to End Tenancy for non-payment of rent on October 2, 2009, by posting on the door.

The Tenants have not paid all the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. However, the Agent testified that the Tenants vacated the rental unit on or before October 31, 2009.

The Tenants and the Landlord had also entered into a one year term lease, which was to end on April 30, 2010.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the Landlord is entitled to an order of possession in these circumstances, the Tenants have vacated the rental unit and therefore, an order of possession is no longer required.

I find that the Tenants have failed to pay rent under the Act and tenancy agreement. I further find they have breached a one year tenancy agreement with the Landlord. The

Landlord mitigated its loss by re-renting the unit for December 1, 2009, however, I find the Landlord incurred a loss of rent for one month during November of 2009.

I find the Landlord has established a total monetary claim of **\$1,753.66** comprised of the balance of rent owed for October of \$833.66, a \$20.00 late fee under the tenancy agreement, and \$850.00 for loss of rent for November, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$425.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,328.66**.

This order 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.

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Dispute Resolution Officer