



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 was convened to hear the matter that was requested by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order due to unpaid rent. The Dispute Resolution Officer who reviewed the Direct Request reconvened this as a hearing pursuant to section 74 as there was a question regarding the correct spelling of the tenant's surname.

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; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 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 for a month to month tenancy beginning on February 1, 2009 for the monthly rent of \$750.00 and a security deposit of \$375.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 12, 2009 with an effective vacancy date of November 12, 2009 due to \$758.00 unpaid rent;

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the months of November and December, 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served by posting it on the tenant's door on November 12, 2009 at 10:00 a.m.

The Notice states that the tenant 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 confirmed the correct spelling of the tenant's name was shown on the Notice to End Tenancy.

The landlord testified the tenant did not pay rent for November or December 2009 in the hearing. The landlord testified the notice to end tenancy was made out for \$758.00 as there is an \$8.00 parking charge. The tenant did not attend the hearing or provide any contradictory evidence. The landlord testified the tenant moved out of the rental unit in mid-December 2009.

Analysis

Section 46(1) of the *Act* allows a landlord to end a tenancy for non-payment of rent by giving a notice to end tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. As the tenant no longer occupying the rental unit, there is no need for an order of possession, I dismiss this part of the landlord's application.

In the absence of any contradictory evidence, I find that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, pursuant to Section 46(5).

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I therefore grant a monetary order in the amount of **\$1,550.00** comprised of \$750.00 rent owed and the \$50.00 fee paid by the Landlord for this application.

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: January 15, 2010.

Dispute Resolution Officer