



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 to obtain an Order of Possession, a Monetary Order for unpaid rent and to recover the filing fee and an Order to keep all or part of the security deposit.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; they were given to the tenant in person. The person who served these documents attended this hearing and gave sworn testimony that service of the hearing documents took place on December 18, 2009 at approximately 2.00 pm.

The landlords agent appeared, gave testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord is entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord is entitled to keep all or part of the security deposit and any accrued interest in partial payment towards any rent arrears?
- Is the landlord entitled to recover the filing fee?

Background and Evidence

This tenancy started on November 01, 2008. Rent is \$700.00 per month due on the 1st of each month. The tenant paid a security deposit on November 04, 2008 of \$350.00.

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The tenant failed to pay all her rent for September leaving a balance owing of \$376.24. She failed to pay rent for October, November and December, 2009. The landlord issued the tenant with 10 Day Notices to End Tenancy for unpaid rent on September 10, October 09, November 05 and December 06, 2009. The tenant did not pay the outstanding rent for any of these months. The Notices state that the tenant has five days to pay the outstanding rent, apply for Dispute Resolution or the tenancy will end. The landlord has requested to amend her application to also recover the unpaid rent for January, 2010. I have allowed this amendment due to the time taken for this application to be heard. The total amount of outstanding rent from September, 2009 to January 2010 is \$3,176.24

The landlord seeks an Order of Possession to take effect as soon as possible. The landlord also requests an Order to keep the tenants security deposit and interest in partial payment of the rent arrears.

Analysis

The tenant has not appeared at the hearing despite having been sent a Notice of the hearing;

I find the landlord is entitled to recover rent arrears for September, October, November and December, 2009 and for January, 2010 to a total amount of \$3,176.24 pursuant to s. 67 of the *Act*. I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit of \$350.00 and accrued interest of \$0.83 in partial payment of the rent arrears.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent from September, 2009 to January, 2010	\$3,176.24
Less security deposit and accrued interest	(-\$350.83)
Total amount due to the landlord	\$2,875.41

I accept that the tenant was served the last 10 Day Notice to End Tenancy for unpaid rent on December 06, 2009, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the



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Notice to End Tenancy within five days. As the landlord posted the Notice to the tenants' door it was deemed to have been served on the tenant three days after posting. Therefore, the amended date to end the tenancy would be December 19, 2009.

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 amended date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$2,875.41**. The order must be served on the tenant and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord 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.

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 27, 2010.

Dispute Resolution Officer