



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 matter was conducted 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. However, the Direct Request Proceeding was adjourned to a participatory hearing to address questions regarding the tenancy agreement.

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 landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on December 10, 2005 for a month to month tenancy beginning on December 12, 2005 for the monthly rent of \$750.00 due on the 1st of the month and a security deposit of \$375.00 was paid. The suite number and rent amount have been altered and initialed by the landlord's agent, not the tenant; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 20, 2009 with an effective vacancy date of November 20, 2009 due to \$5,485.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed have rent current for the duration of the tenancy and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally on November 20, 2009 at 5:25 p.m. The landlord has provided written confirmation that this service was witnessed by a third party.

The landlord provided testimony confirming the tenant paid \$400.00 towards rent in December 2009 and has paid nothing to date in January, 2010. The landlord's claim is amended to be in the amount of \$6,310.00.

The landlord also testified that the tenancy for this rental unit began on July 1, 2008 as a month to month tenancy for the monthly rent of \$800.00 per month due on the 1st of the month. The tenant had moved from a previous rental unit and the security deposit paid on December 12, 2005 was transferred to this rental unit.

The landlord testified that the tenant had been promising that he was to receive an inheritance and the landlord had been trying to wait until this came through prior to taking this action, but that he can no longer wait. He further stated that both he and the owner of the property had been discussing the situation with the tenant for some time.

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 apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary and testimonial evidence and accept that the tenant have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on November 20, 2009, and the effective date of the notice is amended to November 30, 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 with in 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 in the amount of **\$6,410.00** comprised of \$6,310.00 rent owed and the \$100.00 fee paid by the Landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$388.26 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$6,021.74**. 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 27, 2010.

Dispute Resolution Officer