



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

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were initially sent to the tenants by registered mail on December 30, 2009. These were returned to the landlord and the landlord then proceeded to serve the tenants in person on January 27, 2010. The tenant confirmed he had received the notice of hearing and the landlords' evidence package.

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing, a decision has been reached:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit in partial payment towards the rent arrears?



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Background and Evidence

Both parties agree that the tenancy started on May 01, 1995. This is a month to month tenancy and rent is \$1,015.00 per month which is due on the first of each month. The tenants paid a security deposit of \$425.00 on April 25, 1995.

The tenants did not pay rent when it was due on November 01 and December 01, 2009. On December 09, 2009 the landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent. The amount owing at this time was \$2,030.00. Since that time the tenants have not paid rent for January and February, 2010. This brings the total amount of the landlords claim for unpaid rent to \$4,060.00.

The tenants do not dispute that they owe rent for November and December, 2009 and for January and February, 2010. The tenants did not dispute the 10 Day Notice issued on December 09, 2009.

Analysis

There is no dispute about the amount of outstanding rent by the tenants. Consequently I find the landlord is entitled to recover rent arrears for November and December, 2009 and for January and February, 2010 to a total amount of **\$4,060.00** 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 \$425.00 and accrued interest of \$82.43 in partial payment of the rent arrears. As the landlord has been successful in this matter I find the landlord may recover the **\$50.00** filing fee paid for this application from the tenants pursuant to s.72(1) of the *Act*. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for four months	\$4,060.00
Less security deposit and accrued interest	(-\$507.43)
Total amount due to the landlord	\$3,602.57



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I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days. As the landlord posted the Notice to the tenant's door it was deemed to have been served three days after posting. Therefore, the amended date to end the tenancy would be December 22, 2009.

Based on the foregoing, I find that the tenants are 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. The landlord stated that as the tenants are long term tenants they are willing to extend the date to end the tenancy to February 28, 2010.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$3,602.57**. The order must be served on the tenants 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 on **February 28, 2010**. This order must be served on the tenants 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: February 05, 2010.

Dispute Resolution Officer