



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 and a monetary order due to unpaid rent.

The hearing was conducted by teleconference and was attended by the landlord's agent and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and utilities; to a monetary order for unpaid rent and utilities; for all or part of the security deposit and to recover the filing fee from the tenants 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 tenancy began on June 1, 2009 as a 1 year fixed term tenancy for a monthly rent of \$1,050.00 plus utilities due on the 1st of the month and a security deposit of \$525.00 was paid on May 20, 2009.

The landlord submitted the following evidentiary material:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 14, 2009 with an effective vacancy date of December 26, 2009 due to \$780.00 unpaid rent and \$100.00 unpaid utilities.

Documentary and testimonial evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months of December, 2009, January, 2010 and February, 2010 totaling \$2780.00 in unpaid rent and \$450.83 in unpaid utilities. The landlord acknowledged the tenant had paid \$200.00 towards the utility arrears on January 24, 2010, accounted for in the above totals.

The landlord testified the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the tenants on December 14. The landlord has provided written confirmation that this service was acknowledged by the tenant signing the notice.

The tenant testified that she felt it was not fair she had to pay have the utilities as the heat is always turned up too high. She did confirm that the 50/50 arrangement was written in the tenancy agreement.

The tenant testified that she would pay \$2,500.00 to the landlord by February 15, 2010. The landlord was not willing to continue the tenancy and rejected a settlement offer.

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

Analysis

I have reviewed all documentary and testimonial evidence and accept that the tenants had been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on December 14, 2009 and in the hearing the parties agreed to a possession date of February 15, 2010.

I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the Act.

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 effective date of the Notice.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **February 15, 2010**. 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 and I grant a monetary order in the amount of **\$3,280.23** comprised of \$2780.00 rent owed, \$450.23 utilities 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: February 08, 2010.

Dispute Resolution Officer