



Dispute Resolution Services

Page: 1

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 via teleconference and was attended by the landlord. The tenant did not attend the hearing.

The landlord confirmed service of the Notice of Hearing package when it was served on the tenant personally on January 8, 2010.

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 tenancy began in October 2004 as a month to month tenancy for a current monthly rent of \$700.00 due on the 1st of the month with a security deposit of \$350.00 paid on September 22, 2004.

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 1, 2009 with an effective vacancy date of December 12, 2009 due to \$1,190.00 unpaid rent.

Documentary and testimonial evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of November and December 2009 and January and February 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the tenant on December 27, 2009.

The landlord testified that the notice issued on December 1, 2009 was not served on the tenant until December 27, 2009 because the tenant had promised some payment during the

month and when the tenant failed to live up to that agreement the landlord then served the notice on the tenant.

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 evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on December 21, 2009 and the effective date of the notice is amended to January 6, 2010, pursuant to Section 53 of the *Act*.

Despite the date of the notice reading the same as the date the rent is due, contrary to Section 46(1) of the *Act* that states the landlord may end a tenancy if rent is unpaid on any day after the day it is due, I find that since the landlord did not serve the notice on the tenant and the rent continued to be unpaid by December 27, 2009 that the notice is effective.

I accept the evidence before me that the tenant 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 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 **\$2,640.00** comprised of \$2,590.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$362.40 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,277.60**. 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 10, 2010.

Dispute Resolution Officer