

## **DECISION**

Dispute Codes - OPR, MNR, 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 and the tenant.

At the onset of the hearing the landlord indicated that he had not had a tenancy agreement with the respondent but that the agreement he had is with a third party. The respondent acknowledged that when he rented the unit he did so with the understanding that the person renting it to him was the landlord and that she was looking for a roommate situation, she in fact was the tenant.

As a result, I would normally find that the respondent was an occupant and not a tenant, however based on the fact that since December 2009 the landlord accepted rent in the amount of \$420.00 per month from the respondent, I do find that the respondent and the landlord entered into a tenancy agreement and therefore I find the respondent to be a 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; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 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 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 21, 2009 with an effective vacancy date of January 7, 2010 due to \$420.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of November 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent.

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 January 7, 2010.

Based on the fact the tenant did not dispute the notice to end the tenancy, 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.

As the tenancy involves a third party and without that party being named in this claim or being provided notice of this hearing, I cannot determine a financial amount that is owed to the landlord. As such, I dismiss the portion of the landlord's application for the unpaid rent, with leave to reapply should he locate the tenant.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **February 28, 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.

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 16, 2010.

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Dispute Resolution Officer