



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's agent and the tenant.

During the course of the hearing the tenant's roommate was constantly talking in the background disrupting the hearing. On several occasions I requested that the tenant have her either remain silent or leave the room. After several warnings the roommate complied.

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 February 28, 2005 for a month to month tenancy beginning on March 1, 2005 for the current monthly rent of \$771.00 due on the 1st of the month and a security deposit of \$325.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 5, 2010 with an effective vacancy date of February 15, 2010 due to \$771.00 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 January, February, and March 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 February 5, 2010, at 6:00 p.m. The landlord has provided written confirmation that this service was witnessed by a third party.

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 had been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on February 5, 2010 and the effective date of the notice is February 15, 2010. 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.

The landlord, at the tenant's request for more time to vacate, agreed to accept possession after 7 days upon service of the order of possession

Conclusion

I find that the landlord is entitled to an Order of Possession effective **seven days after service on the tenant**. This order must be served on the tenants 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 **\$2,363.00** comprised of \$2,313.00 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 \$336.51 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$2,026.49**. 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: March 04, 2010.

Dispute Resolution Officer