

## **DECISION**

### **Dispute Codes**

For the tenant – CNR

For the landlord - OPR, MNR, MNSD, MNDC, FF

### **Introduction**

This decision was set for today's date to hear two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were due to be heard together. The tenant seeks to cancel the 10 Day Notice to End Tenancy for unpaid rent. The landlord seeks an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent, an Order to keep the security deposit and recover the filing fee. The landlord withdrew his application for money owed or compensation for damage or loss under the Act.

The tenant did not appear at the hearing. The line remained open for the duration of the hearing however the tenant failed to dial into the conference call. As there has been no hearing into the merits of the tenants' application, it is dismissed without leave to reapply. The hearing continued with the landlords application in the absence of the tenant.

The landlord served the tenant with a copy of the Application and Notice of Hearing. I find that the tenant was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

### **Issues(s) to be Decided**

- Is the landlord entitled to an Order of Possession based on the 10 Day Notice issued to the tenant for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent for January, February and March, 2010?
- Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

This month to month tenancy started on April 01, 2009. The tenant pays a monthly rent of \$650.00 which is due on the first of each month. The tenant paid a security deposit of \$325.00 on March 24, 2009.

The landlord testifies that he served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on January 21, 2010 with an effective date of January 21, 2010. This notice states the tenant has not paid rent for January, 2010 of \$650.00. The landlord has provided a signed proof of service that the Notice was given in person to the tenant on January 21, 2010 at 5.30 p.m. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent but did dispute the Notice on January 26, 2010. However the tenant has not appeared at the hearing to state the merits of her application. Since the Notice was issued the tenant has not paid rent for February or March, 2010. The landlord claims the tenant now owes rent of \$1,950.00.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears and to recover the \$50.00 filing fee. The landlord has also applied for an Order of Possession to take effect as soon as possible.

### Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing and despite making her own application to cancel the Notice to End Tenancy; therefore, in the

absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for January, February and March 2010 of **\$1,950.00** 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 **\$325.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for January, February and March, 2010	\$1,950.00
Less security deposit and accrued interest	(-\$325.00)
<b>Total amount due to the landlord</b>	<b>\$1,675.00</b>

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end on January 21, 2010. As this is dated the same day the notice was served I have amended the date the Notice would be effective to January 31, 2010 pursuant to s. 68(2) of the *Act*. The tenant did not pay the outstanding rent within five days and did not attend the hearing to dispute the Notice.

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 and grant the landlord an order of possession.

### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,675.00**. The order must be served on the respondent 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 **two days** after service on the tenant. This order must be served on the Respondent 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: March 11, 2010.

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Dispute Resolution Officer