

## **DECISION**

**Dispute Codes**     OPR, MNR, FF

### **Introduction**

This hearing was convened by conference call to deal with the landlord's application for an Order of Possession for unpaid rent, a monetary order for unpaid rent, and to recover the filing fee from the tenant for the cost of this application.

The parties both gave affirmed evidence.

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

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

### **Background and Evidence**

This month-to-month tenancy began on October 1, 2006. Rent in the amount of \$700.00 is payable on the 1<sup>st</sup> day of each month. The tenant testified that he has a room-mate, and each of them pays \$350.00. The tenant also paid a security deposit in the amount of \$337.50 on September 29, 2006.

On January 13, 2010, the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which was dated January 13, 2010, for failing to pay \$350.00 due on the 1<sup>st</sup> of January, 2010, and that the expected move-out date is January 23, 2010. The landlord's application includes that claim, in addition to rent due for February, 2010 in the amount of \$350.00 and \$25.00 per month for 2 months of late fees. The tenant does not deny that rent was late for those months, but disagrees that the outstanding rent has not been paid. He states that he gave 2 cheques to the landlord payable to the landlord himself. He also agrees that the Tenancy Agreement contains a clause for \$25.00 per month for late fees, and agrees he owes \$50.00.

The landlord's agent does not know whether or not the outstanding rent has been paid, or if it was, when it was paid.

### **Analysis**

The landlord has the burden of proving his claim as against the tenant. The landlord has failed to provide me with the Tenancy Agreement or the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The landlord's agent has no evidence to provide about what rent is due and what rent might be outstanding.

The *Residential Tenancy Act* states that:

**46 (1)** A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find that the landlord did serve the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 13, 2010. However, Section 46 (4) states:

**46 (4)** Within 5 days after receiving a notice under this section, the tenant may

- (a) Pay the overdue rent, in which case the notice has no effect, or
- (b) Dispute the notice by making an application for dispute resolution.

I have no evidence before me of the date that the tenant paid the outstanding rent. The landlord has failed to sufficiently prove that the rent remained unpaid for more than 5 days beyond the date that the notice was served upon the tenant.

### **Conclusion**

The landlord's application for an Order of Possession for unpaid rent for January and February, 2010 is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for unpaid rent for January and February, 2010 is hereby dismissed without leave to reapply.

The landlord's application for a monetary order for late rent fees is hereby awarded at \$25.00 for January and \$25.00 for February, 2010. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Since the landlord was not successful with the claim, the landlord is not entitled to recover the filing fee from the tenant for the cost of this application.

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 23, 2010.

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Dispute Resolution Officer