

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; they were handed to the tenant in person on January 23, 2010. The landlords agent gave affirmed testimony that service was completed as stated.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover rent owed and late fees?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on February 01, 2003. This was a fixed term tenancy for one year which reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$895.00 per month and is due on the first of each month. The tenant paid a security deposit of \$410.00 on February 05, 2003.

The landlords' agent testifies that the tenant owed rent for January, 2010 of \$895.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on January 02, 2010. This was posted to the tenants' door and was deemed to have been served three days after posting.

The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 12, 2010. On January 14, 2010 the tenant paid \$350.00 and on January 28, 2010 the tenant paid \$565.00. These payments were accepted for use and occupancy only. The tenant did not pay rent for February until February 24, 2010 when the tenant made a payment of \$915.00 this payment also included late fees for January and February of \$40.00. This was accepted for use and occupancy only. The tenant has not paid rent for March, 2010 and now owes an amount of \$895.00.

The landlords' agent testifies that there is a clause in the tenancy agreement that states the landlord will charge the tenant \$20.00 for each month rent is late. The landlord seeks to recover \$20.00 for late fees for March, 2010.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears and recover the 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; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for March, 2010 of **\$895.00** pursuant to s.67 of the *Act*.

I further find the landlord is entitled to recover **\$20.00** in late fees for March, 2010 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 **\$410.00** and accrued interest of **\$14.15** in partial payment of the rent arrears.

As the landlord has been successful in this matter, she 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 March, 2010	\$895.00
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Filing fee	\$50.00
Less security deposit and accrued interest	(-\$424.15)
Total amount due to the landlord	\$540.85

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. As this Notice was posted on the tenants' door it was deemed served three days after posting and therefore the amended date of the notice is January 15, 2010. The tenant did not pay the whole amount of outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 **\$540.85**. 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 05, 2010.

Dispute Resolution Officer