

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent. 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 tenants, was done in accordance with section 89 of the *Act*; they were handed to one of the tenants in person on February 20, 2010 with a witness who gave affirmed testimony that service was completed as indicated by the landlords' agent.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. One of the tenants appeared at the hearing and asked for an adjournment so his legal representative could attend. The landlords' agent did not agree to an adjournment and the hearing continued. The tenant left stated that he did not want to take part in the hearing and left the conference call without providing any evidence.

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 month to month tenancy started on December 18, 2009. Rent for this unit is \$1,000.00 per month and is due on the first of each month. The tenants paid a security deposit of \$500.00 on January 01, 2010.

The landlords' agent testifies that the tenants paid rent for the remainder of December, 2009 plus an additional \$50.00 which was offset against rent for January, 2010. The tenants did not pay rent for January, 2010 of \$950.00 on the day it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on January 21, 2010 in person to one of the tenants. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 31, 2010. The tenant did not pay all the outstanding rent or dispute the Notice within five days. On January 26, 2010 the tenants paid \$600.00 towards their rent arrears. Since that time the tenants have not paid rent for February or March, 2010 to the amount of \$2,000.00. The landlord has applied for the recovery of rent for February, 2010 in the application and the landlords' agent has requested to amend her application to recover the unpaid rent for March, 2010 also. The total amount of unpaid rent is now \$2,350.00.

The landlords' agent testifies that there is a clause in the tenancy agreement that states the landlord will charge the tenant \$25.00 for each month rent is late. The landlord seeks to recover \$75.00 in late fees

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

Analysis

One of the tenants appeared briefly at the hearing, but left the conference call after his request for an adjournment was refused; 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 **\$2,350.00**. I have allowed the landlords' amended claim for March, 2010 as the tenants continue to reside at the rental unit and would be aware that rent was due for this month.

I find the landlord is not entitled to recover \$75.00 in late fees for January, February and March, 2010 as the tenancy agreement or addendum does not contain a clause informing the tenant that the landlord will make these charges if rent is not paid on the due date.

I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit of **\$500.00** 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 January February and March, 2010	\$2,350.00
Less security deposit	(-\$500.00)
Total amount due to the landlord	\$1,900.00

I accept that the tenants were 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 tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the 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 tenants are 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 **\$1,900.00**. The order must be served on the respondents 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 tenants. This order must be served on the Respondents 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 08, 2010.

Dispute Resolution Officer