

## **DECISION**

**Dispute Codes**      OPR, MNR, MNSD, MNDC, FF

### **Introduction**

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on February 20, 2010, the tenants did not participate in the conference call hearing. An agent for the landlord did attend the hearing and gave evidence.

At the outset of the hearing, the landlord's agent testified that the Landlord's Application for Dispute Resolution was amended and served on the tenants by registered mail on March 29, 2010. The documents are deemed served under the *Act* 5 days after such mailing. I find that the landlord did not serve the amended application 5 clear days before the hearing date, however, the original application was served on February 20, 2010 well in advance of the hearing.

The landlord's agent further testified that the tenants vacated the unit prior to April 3, 2010, and, therefore, no Order of Possession is sought, and I dismiss that portion of the landlord's application without leave to reapply.

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

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

### **Background and Evidence**

The tenancy began on October 1, 2005. Rent in the amount of \$1,665.00 is payable in advance on the first day of each month. The tenancy was a fixed term tenancy until its expiration on September 30, 2006, and then it reverted to a month-to-month tenancy.

At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$762.50.

The tenants failed to pay rent in the month of February, 2010 and on February 3, 2010 the landlord served the tenants with a notice to end tenancy for non-payment of rent by posting it to the door of the residence. The tenants further failed to pay rent in the months of March and April, 2010. The tenancy agreement, a copy of which was provided as evidence in advance of the hearing, shows that \$20.00 is payable for each month as late fees and the landlord is claiming \$60.00 for 3 months. The landlord also testified that the account for these tenants has been carrying a \$6.00 credit, which should be deducted from the amount of rent owed.

### **Analysis**

Based on the landlord's testimony I find that the tenants were served with a notice to end tenancy for non-payment of rent. The tenants have not paid the outstanding rent and have not applied for dispute resolution to dispute the notice and are therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice.

As for the monetary order, I find that the landlord has established a claim for \$5,049.00 in unpaid rent and late fees. The landlord is also entitled to recovery of the \$100.00 filing fee.

### **Conclusion**

I order that the landlord retain the deposit and interest of \$789.51 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$4,359.49. This order must be served on the tenants and may be filed in the Small Claims 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: April 08, 2010.

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Dispute Resolution Officer