

DECISION

Dispute Codes OPR, MNR, MNDC, 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 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 sent to the tenant by registered mail on March 04, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on March 09, 2010 the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present his 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 month to month tenancy started on July 01, 2009 although the tenant actually moved into the unit on June 23, 2009. Rent for this unit is \$749.00 per month and is due on the first of each month. The tenant paid a security deposit of \$374 on June 22, 2009.

The landlords' agent testifies that the tenant gave the landlord a rent cheque on February 01, 2010 but this was returned to the landlord on February 05, 2010 as there were insufficient funds available in the tenants account to honour it. Therefore the tenant did not pay rent for February, 2010 of \$749.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on February 05, 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 February 15, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for March or April, 2010 to the amount of \$1,498.00. The total amount of unpaid rent is now \$2,247.00.

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 late fees for February and March, 2010 to the sum of \$50.00.

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

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 February, March and April 2010 of **\$2,247.00**.

I further find the landlord is entitled to recover **\$50.00** in late fees for February and 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 \$374.00 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 February, March and April 2010	\$2,247.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$374.00)
Total amount due to the landlord	\$1,973.00

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 would be February 18, 2010. The tenant 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 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 monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1973.00**. 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: April 15, 2010.

Dispute Resolution Officer