

DECISION

Dispute Codes - OPR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on December 16, 2009 for a 1 year fixed term tenancy beginning on January 1, 2010 for the monthly rent of \$715.00 due on the 1st of the month and a security deposit of \$357.50 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 22, 2010 with an effective vacancy date of March 4, 2010 due to \$715.00 unpaid rent.

Documentary and testimonial evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months February, March and April 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent personally on February 22, 2010.

The tenant testified that he had not paid rent in response to recent actions taken by the landlord such as renovations that are causing disturbances; entering rental units without notice; moving tenants between units; inadequate provision of phone messages among other issues.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary and testimonial evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is

deemed to have been received by the tenant on February 22, 2010 and the effective date of the notice is March 4, 2010, pursuant to Section 53 of the *Act*.

Despite the tenant's testimony that the landlord may have breached the *Act*, Section 26 requires a tenant to pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulations or tenancy agreement. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$2,195.00** comprised of \$2,145.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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 21, 2010.

Dispute Resolution Officer