

DECISION

Dispute Codes MNR, MNDC, MNSD, OPR, 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, for money owed or compensation for damage or loss under the Act, and to recover the filing fee. At the outset of the hearing the landlord withdrew his application to keep the tenants security deposit.

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 16, 2010. Mail receipt numbers were provided in the landlord's testimony. The tenant was deemed to be served the hearing documents on March 21, 2009, 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?

Background and Evidence

This month to month tenancy started on February 16, 2009. Rent for this unit is \$1,000.00 per month and is due on the first of each month. The tenant paid a security deposit of \$500.00 on February 02, 2009.

The landlords' agent testifies that the tenant owed a balance of rent for December, 2009 of \$100.00 and a balance of rent for February, 2010 of \$100.00. The tenant did not pay rent for March, 2010 on the day it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on March 04, 2010 by posting this to the tenants' door. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on March 14, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. A One Month Notice to End Tenancy was issued to the tenant on March 04, 2010 and gave the reasons that the tenant is repeatedly late paying rent and the tenant has breached a material term of the tenancy agreement which has not been corrected within a reasonable time frame after written notice to do so. The tenant was issued with a breach letter about late payments of rent on June 03, 2009.

On March 15, 2010 the tenant paid \$800.00 and she paid \$200.00 on March 24, 2010. The landlords' agent testifies that he had a conversation with the tenant about her late payments of rent and would forgive her the late payments this time only if she continues to pay her rent on time from this time forward. The tenant paid her rent on time for April, 2010. The total amount of outstanding rent now due is \$200.00 and the landlord has amended his claim accordingly.

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 the sum of \$150.00 in late fees for September, 2009 to March, 2010. The landlord has provided the tenants rent ledger showing rent was paid late for these months.

The landlord has also applied for an Order of Possession to use in the event the tenant does not pay rent on time for May, 2010.

The landlord seeks money owed for a water leak caused by the tenant leaving her sprinkler on for over six hours. This caused flooding to a neighbour's property and a charge of \$105.00 was made by the maintenance man called to rectify the flood water. The landlord has provided evidence of the amount charged for this work and the report detailing how the flood occurred.

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 tenant owes rent for December, 2009 of \$100.00 and February, 2010 of \$100.00. The landlord is therefore entitled to recover rent arrears of **\$200.00** pursuant to section 67 of the *Act*.

I further find the landlord is entitled to recover **\$150.00** claimed in late fees pursuant to s.67 of the *Act*. I find the landlord has established his claim for money owed by the tenant of **\$105.00** due to the tenants' negligence in leaving the sprinklers running which caused a flood to the neighbouring property.

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 December, 2009, and February 2010	\$200.00
Money owed for flood	\$105.00
Filing fee	\$50.00
Total amount due to the landlord	\$505.00

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. 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.

As the landlord has been given an Order of Possession based on the 10 Day Notice no further orders are required for the One Month Notice issued on March 04, 2010.

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 **\$505.00**. 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 29, 2010.

Dispute Resolution Officer