

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's request for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and recovery of the filing fee. The tenant did not appear at the hearing. The landlord testified that the tenant was notified of the landlord's application and this hearing by registered mail sent to the rental unit on February 24, 2010. The landlord provided a registered mail tracking number and testified that the registered mail was unclaimed and returned to sender. I found that the tenant had been sufficiently served with the hearing documents and I proceeded to hear from the landlord without the tenant present.

The landlord requested the application be amended to request retention of the security deposit in partial satisfaction of the rent owed. I accepted the landlord's request and amended the application.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?
3. Is the landlord entitled to retain the tenant's security deposit?
4. Award of the filing fee.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on September 11, 2009 for a tenancy set to commence September 15, 2009 for a monthly rent of \$775.00 due on the 1st day of the month and payment of a \$387.50 security deposit;
- A copy of the tenant's ledger account up to the month of February 2010;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 5, 2010 indicating \$375.00 was outstanding as of January 1, 2010; and,
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 8, 2010 indicating \$1,150.00 was outstanding as of February 1, 2010.

The landlord testified that the caretaker posted the 10 Day Notices on the tenant's door on the same day the Notices were issued. The landlord testified the tenant did not pay the outstanding rent, make arrangements for a payment schedule, or dispute the Notices.

In making this application, the landlord requested recovery of the unpaid rent for January and February 2010 and potential loss of rent for March and April 2010. The landlord testified the tenant is still residing in the rental unit.

Analysis

Upon review of the documentary evidence and the landlord's testimony, I accept that the tenant has been served with the 10 Day Notices as declared by the landlord. I accept the evidence before me that the tenant failed to pay the rent owed in full or dispute the Notices within the 5 days of receiving the Notices, as permitted 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 would end on the effective date of the Notice. The effective date of the Notice has passed and I find that the landlord is

entitled to an Order of Possession effective two days after service upon the tenant. The Order of Possession must be served upon the tenant and may be filed in the Supreme Court and enforced as an Order of that Court.

Since the tenant is still residing in the rental unit and has not paid any monies to the landlord since December 2009, I also find the landlord entitled to recover the amount claimed by the landlord and the filing fee paid for this application. I authorize the landlord to retain the security deposit in partial satisfaction of the rent owed. I provide the landlord with a Monetary Order calculated as follows:

Unpaid rent – January 2010	\$ 375.00
Unpaid rent – February 2010	775.00
Loss of rent – March 2010	775.00
Loss of rent – April 2010	775.00
Filing fee	50.00
Less: security deposit	<u>(387.50)</u>
Monetary Order for landlord	\$ 2,362.50

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

I provide the landlord with an Order of Possession effective **two days after service** on the tenant. I authorize the landlord to retain the tenant's security deposit and I provide the landlord with a Monetary Order for the balance of \$2,362.50 to serve upon the tenant.

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 09, 2010.

Dispute Resolution Officer