

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and to recover the filing fee for the Application.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, sent on January 24, 2010, and deemed received five days later under the Act, the Tenant did not appear. I find the Tenant has been served in accordance with the Act.

An Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the affirmed testimony of the Landlord, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent and utilities. The Tenant did not pay all the outstanding rent, or utilities, and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

However, the Agent for the Landlord testified that the Tenant vacated the rental unit on or about January 25, 2010.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the Landlord is entitled to an order of possession in these circumstances, the Tenant has vacated the rental unit and therefore, an order of possession is no longer required.

I find that the Tenant has failed to pay rent and utilities under the Act and tenancy agreement.

I find the Landlord has established a total monetary claim of **\$906.70** comprised of the balance of rent owed for January of \$400.00, \$456.70 for utilities, and the \$50.00 fee paid by the Landlord for this application. I grant the Landlord an order under section 67 for the balance due of **\$906.70**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Following the hearing the Landlord sent in evidence claiming the Tenant had failed to clean or make repairs in the rental unit. The Landlord requested additional financial compensation for this. I am not able to grant this, as the Landlord had not included these amounts in the original Application served on the Tenant. The Landlord must file another Application to make this claim. The Landlord has leave to apply for further monetary orders.

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: March 16, 2010.

Dispute Resolution Officer