

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The Application had originated under the Direct Request Process and was adjourned to a participatory hearing.

Although served with the Application for Dispute Resolution and Notice of Hearing in person on March 12, 2010, the Tenant did not appear. I find the Landlord has served the Tenant in accordance with the Act. The service is valid against both Tenants for the Application for an order of possession, and is valid against one Tenant for the monetary claim.

An Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present their 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 testimony of the Agent for the Landlord, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on February 10, 2010, in person. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

### Analysis

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

The Tenant has not paid the outstanding rent 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, February 20, 2010. I find the Tenant is overholding without paying rent.

I find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. April 23, 2010**. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenant is overholding, I amend the Application for Dispute Resolution of the Landlord to include rent for the months of March and April 2010. Therefore, I find that the Landlord has established a total monetary claim of **\$3,176.00** comprised of \$1,042.00 in rent for each of February, March and April of 2010, and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$473.69** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,702.31**.

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

#### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession effective against both Tenants, may keep the security deposit and interest in partial satisfaction of the claim and is granted a monetary order for the balance due against the Tenant served.

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 22, 2010.

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Dispute Resolution Officer