

## **DECISION**

Dispute Codes      OPR, CNR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution.

The Landlord has filed to request an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The Tenant has filed to request an order to cancel a Notice to End Tenancy issued by the Landlord to the Tenant for unpaid rent.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### 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?

Is the Landlord's 10 day Notice to End Tenancy for unpaid rent valid or should it be cancelled?

### Background and Evidence

This tenancy began on March 1, 2009, with the parties entering into a written tenancy agreement. The monthly rent was set at \$1,200.00, and the Tenant paid a security deposit of \$600.00 on February 25, 2009.

The Agent for the Landlord testified that since the fall of 2009, the Tenant has been repeatedly late paying rent, and still owes outstanding rent of \$687.00 from before March 1, 2010. The Agent for the Landlord further testified that the Tenant has not paid the rent for April 2010 as well, although the Landlord received a partial payment from the Tenant's brother for \$375.00 for April rent.

Based on the testimony of both parties, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on March 6, 2010, by posting on the door (the "Notice"). The Notice informed the Tenant she owed \$1,887.00 in rent on March 1, 2010. The Landlord testified that this amount included \$1,200.00 for March 2010 rent, as well as \$687.00 outstanding from prior rental periods.

The Tenant testified her brother, a roommate, had his rent paid directly to the Landlord in the amount of \$375.00 per month. The Tenant testified that she offered the Landlord \$825.00 in rent for March, but could not pay the amount owed from previous months.

The Tenant also testified that her brother did not get a key fob for the rental unit even though he was paying rent.

### Analysis

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

The Notice given to the Tenant is valid and I do not find it should be cancelled. Therefore, I dismiss the Tenant's Application for Dispute Resolution.

I find that the Tenant has not paid the rent due to the Landlord and has breached the Act, and therefore the Landlord is entitled to an order to end this tenancy.

Whether or not the Tenant's brother had a key fob for the rental unit, the Tenant must pay rent when it is due under section 26 of the Act.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$2,762.00** comprised of \$1,887.00 in rent due on March 1, 2010, \$825.00 for the balance of April 2010 rent and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$600.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,162.00**.

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 owed to the Landlord and the Notice given to her was valid, therefore, her Application to cancel the Notice is dismissed.

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

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.

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Dispute Resolution Officer