

## **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 to recover unpaid rent, a Monetary Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, They were sent to the tenants by registered mail on March 19, 2010. The tenants confirmed they had received the notice of hearing package and the landlords' evidence.

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing, a decision has been reached:

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit in partial payment towards the rent arrears?

### Background and Evidence

Both parties agree that the tenancy started on February 01, 2009. This is a month to month tenancy and rent is \$850.00 per month which is due on the first of each month. The tenants paid a security deposit of \$425.00 on January 25, 2009 and a pet damage deposit of \$425.00 on February 01, 2009.

The tenants owed rent of \$1,900.00 on March 01, 2010. The landlord served the tenants in person with a 10 Day Notice to End Tenancy for unpaid rent on March 02, 2010. The tenants

had five days to pay the outstanding rent or make an application to dispute the 10 day Notice. On March 12, 2010 the tenants paid \$350.00, on March 20, 2010 the tenant's paid \$300.00, on March 24, 2010 social assistance paid \$425.00 to the landlord for the tenants, on March 26, 2010 the tenants paid \$300.00. On April 01, 2010 the tenants paid rent of \$850.00. On April 28, 2010 social assistance paid \$425.00 which was applied towards the tenants outstanding rent. At this time the amount of outstanding rent up to the end of April, 2010 is \$100.00. On May 01, 2010 rent was again due for the month of May, 2010. The tenants have not paid rent for May, 2010. The amount of outstanding rent is now \$950.00.

The tenants do not dispute that they owe this amount in rent. The tenants did not dispute the 10 Day Notice issued on December 09, 2009.

### Analysis

There is no dispute about the amount of outstanding rent by the tenants. Consequently I find the landlord is entitled to recover rent arrears **\$950.00** pursuant to s. 67 of the *Act*. I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit of \$425.00 and pet damage deposit of \$425.00 in partial satisfaction of the rent arrears. As the landlord has been successful in this matter I find the landlord may recover the **\$50.00** filing fee paid for this application from the tenants pursuant to s.72(1) of the *Act*. The landlord will receive a monetary order for the balance owing as follows:

|  |                 |
|--|-----------------|
| Outstanding rent                           | \$950.00        |
| Less security deposit and accrued interest | (-\$850.00)     |
| <b>Total amount due to the landlord</b>    | <b>\$150.00</b> |

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end on March 12, 2010. The tenants 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 tenants are 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 pursuant to section 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$150.00**. The order must be served on the tenants 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. This order must be served on the tenants 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: May 03, 2010.

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Dispute Resolution Officer