

## **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, an Order to keep 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*, and was sent to the tenant by registered mail on March 20, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on March 25, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*. I find that the tenant was properly served pursuant to s. 89 of the *Act* with notice of this hearing and the hearing proceeded in the tenants' absence.

The landlords agent appeared, was provided the opportunity to present their evidence orally, in written form, documentary form and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the landlord is entitled to an Order of Possession?
- 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?

### Background and Evidence

This month to month tenancy started on March 01, 2007. Rent for this unit was subsidised. The tenant paid a monthly rent of \$164.00 per month which was due on the first of each month. The tenant paid a security deposit of \$350.00 on February 06, 2007. The tenant owed rent from March 01, 2009 to March 01, 2010 of \$1,826.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on March 04, 2010. This was sent to the tenant by registered mail on March 04, 2010 and was deemed to have been served five days after posting. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on March 19, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord testifies that the tenant has not paid rent for April and May, 2010 and has remained living at the rental unit. The landlord has requested to amend the monetary claim to include unpaid rent for these two months also. Therefore I have amended the landlords' monetary claim and the total amount of rent arrears is now \$2,154.00.

The landlord gave the tenant opportunity to meet to discuss the rent arrears and work out a repayment plan. The tenant failed to attend that meeting. The landlord arranged another meeting to discuss the situation but the tenant did not respond to this request.

The landlord has applied to retain the tenants' security deposit in partial payment towards the rent arrears and recover the filing fee paid for this application.

The landlord has applied for an Order of Possession to take effect as soon as possible.

### Analysis

The tenant did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears of **\$2,154.00** owed from March 01, 2009 to

May 01, 2010 pursuant to s. 67 of the *Act*. I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$350.00 and accrued interest of \$10.07 in partial payment of the rent arrears.

As the landlord has been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent	\$2,154.00
Less security deposit and accrued interest	(-\$360.07)
Total amount due to the landlord	\$1,843.93

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant 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 tenant is 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.

### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,843.93**. The order must be served on the respondent 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 on the tenant. This order must be served on the Respondent 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 04, 2010.

---

Dispute Resolution Officer