

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF, CNR

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenants application is a request to have a Section 46, 10 day, Notice to End Tenancy cancelled.

The landlords application is a request for an order possession based on a Notice to End Tenancy for non-payment of rent, a request for an order for outstanding rent totaling \$4864.00, a request to retain the full security deposit plus interest towards that claim, and a request that the respondent bear the \$50.06 cost of the filing fee that was paid for the application for dispute resolution.

### Decision and reasons

On March 5, 2010 the landlord served a Section 46, 10 day Notice to End Tenancy for non-payment of rent by registered mail, and therefore it is deemed received on March 10, 2010.

Sections 46(4) & 46(5) state:

(4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

In this case the tenant failed to either pay the rent or file for dispute resolution within the five day grace period and therefore he is conclusively presumed to have accepted that the tenancy ends and he must vacate the rental unit.

Further even if the tenants had applied within the time limits set out under the act, there is still a substantial amount of rent outstanding and therefore no grounds to set aside the Notice to End Tenancy.

Therefore I will not be setting aside the Notice to End Tenancy, and I will be issuing an Order of Possession to the landlord.

However it is also my finding that although both sides agree there is still a substantial amount of rent outstanding; neither side has supplied sufficient evidence to establish the exact amount. Since neither side has supplied sufficient evidence to establish the amount outstanding I will not dismiss this claim outright, I will instead dismissed it with leave to reapply.

### Conclusion

The tenant's application is dismissed in full without leave to reapply.

On the landlords application I have issued an order possession to the landlord for 1 p.m. on May 31, 2010, and I dismiss with leave to reapply for monetary portion of the landlords claim.

I further ordered that the tenant bear the \$50.00 cost of the filing fee that was paid by the landlord for his application for dispute resolution.

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 06, 2010.

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Dispute Resolution Officer