

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and an order to recover the filing fee for the Application.

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. The Tenant corrected the spelling of his name at the outset of the hearing and I have amended the style of cause to reflect this.

### 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 Landlord's Agent, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on March 5, 2010, by posting on the door. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid in full within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant paid \$444.60 for a portion of his March 2010 rent, but withheld the balance as he claims he had made repairs to the rental unit. He claims there is no heat or hot water in the rental unit. He did not pay his April 2010 rent either.

The Tenant claims he had permission from the Landlord to make these deductions from the rent. The Tenant claims he has copies of money orders he sent the Landlord. He had not submitted any documentary evidence to prove either of these allegations.

The Agent for the Landlord explained that the Tenant might have a money order dated from March 2010, however, that was used to pay his February 2010 rent.

The Tenant had not written the Landlord to make repairs, nor had he filed an Application for Dispute Resolution to have the Landlord make the repairs.

### Analysis

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

The Tenant has not paid all the outstanding rent owed and he 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.

The Tenant had insufficient evidence to show he had the prior written consent of the Landlord to make deductions from his rent, or that he had an order from the Residential Tenancy Branch allowing him to deduct from rent. Under section 26 of the Act the Tenant may not stop paying rent, unless he has an order to do so or another right under the Act to reduce rent. These exceptions do not apply to this Tenant. Furthermore, the Tenant did not submit any documentary evidence to support his claim he had paid the rent or had permission to deduct rent.

Therefore, 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 further find that the Landlord has established a total monetary claim of **\$2,405.40** comprised of \$955.40 due for March and \$1,400.00 for April rent and the \$50.00 fee paid by the Landlord for this application, and I grant the Landlord an order under section 67 for the money owed. This order may be filed in the Provincial Court (Small Claims) 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.

---

Dispute Resolution Officer