

DECISION

Dispute Codes

For the tenant - CNR, AS

For the landlord – OPR, MNR, MNSD, FF

Introduction

This decision was set to deal with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were due to be heard together. The tenant applied to cancel the 10 Day Notice to End Tenancy for unpaid rent and for an Order for the tenant to assign or sublet the rental unit because the landlords' permission has been unreasonable withheld. The landlord seeks an Order of Possession for unpaid rent; a Monetary Order to recover unpaid rent; an Order to keep the security deposit and recover the filing fee paid for this application.

The hearing started at 11:00 a.m. as scheduled, however by 11:30 a.m., the tenant had not dialled into the conference call. As there has been no hearing into the merits of the tenants' application, it is dismissed without leave to reapply. The hearing continued with the landlords' application only.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 16, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on April 21, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and his agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?

- Is the landlord entitled to a monetary Order to recover outstanding rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on December 01, 2008. Rent for this unit is \$1,200.00 per month and is due on the first of each month. The tenant paid a security deposit of \$400.00 on December 01, 2008. The landlords' agent testifies that the landlord has attempted to get the tenant to sign a tenancy agreement on two occasions but she has refused to do so.

The landlords' agent testifies that part of the tenants rent was paid by welfare cheque. This cheque was received of \$375.00 towards the rent for January, 2010 and the tenant paid \$400.00 in rent on January 20, 2010. This left an outstanding balance of \$425.00 for January, 2010 rent. The landlord received welfare cheques towards the tenants rent for February, March and April, 2010; however, the tenant did not make any other rent payments for these months. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on April 02, 2010. This was given to the tenant in person on April 02, 2010. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on April, 12, 2010. The tenant did not pay the outstanding rent but did apply to dispute the Notice on April 06, 2010. However, the tenant has not appeared at the hearing held today. The landlords' agent testifies that the tenant cancelled her welfare payments and has paid no rent for May, 2010. The landlords' agent has requested to amend the landlords' application to recover the unpaid rent for May, 2010. The total amount of unpaid rent including May, 2010 is now \$4,100.00.

The landlord has provided rent receipts and a rent ledger showing the rent that has been paid and rent outstanding.

The landlord has applied to retain the tenants' security deposit of \$400.00 in partial payment towards the rent arrears. The landlord has also 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 given 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 for January, February, March, April and May, 2010 of **\$4,100.00** pursuant to s. 67 of the *Act*. I have allowed the landlords' amended claim for May, 2010 as the tenant continues to reside at the rental unit and would be aware that rent was due on May 01, 2010.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$400.00 and accrued interest of \$0.51 in partial payment of the rent arrears.

As the landlord has been successful in this matter, he is 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 for January, February, March, April and May, 2010	\$4,100.00
Subtotal	\$4,150.00
Less security deposit and accrued interest	(-\$400.51)
Total amount due to the landlord	\$3,699.49

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 and did not appear at the hearing to dispute the Notice to End Tenancy despite making an application to do so.

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 **\$3,699.49**. 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 20, 2010.

Dispute Resolution Officer