

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 and a monetary order due to unpaid rent.

The hearing was conducted via teleconference and was attended by the landlord only. The tenant did not attend.

The matter was originally requested through the Direct Request Process, however the adjudicating Dispute Resolution Officer had insufficient information regarding the service of the notice to end tenancy and the dollar value of the rent due, as such it was set over to a hearing scheduled for May 6, 2010.

At the hearing of May 6, 2010 the landlord had failed to serve the tenant with notice of the hearing and a new hearing was set for today's date. The landlord confirmed his testimony today that he served the tenant with the notice of this hearing and his evidence by registered mail on May 11, 2010 and provided confirmation of that service.

I am satisfied the tenant has been sufficiently served with notice of this hearing and all evidence presented.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on July 1, 2006 for a month to month tenancy beginning on July 1, 2006 for a current monthly rent of \$1,325.00 due on the 1st of the month and a security deposit of \$625.00 was paid;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 19, 2010 with an effective vacancy date of March 1, 2010 due to \$4,555.00 in unpaid rent.
- A copy of the tenant's account ledger produced by the landlord confirmed rent owed is in the amount of \$5440.00.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the several months over the period of time beginning in January 2009 up to and including May 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent on February 20, 2010 by leaving the notice with the tenant's daughter.

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 apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on February 20, 2010 and the effective date of the notice was March 1, 2010. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,490.00** comprised of \$5440.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$718.11 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$4771.89**. This order must be served on the tenant and 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 28, 2010.

Dispute Resolution Officer