

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. At the hearing the landlord testified that the tenant was personally served with the application for dispute resolution on or about April 15. I found that the tenant had been properly served with the hearing documents and the hearing proceeded in her absence.

### Issues to be Decided

Is the landlord entitled to an order of possession?

Is the landlord entitled to a monetary order as claimed?

### Background and Evidence

The landlord's undisputed testimony is as follows. The tenant is obligated to pay \$450.00 in rent on the 18<sup>th</sup> day of each month. The tenant failed to pay rent in the months of February, March and April. Although the landlord's application for dispute resolution indicates that the tenant was personally served with the notice to end tenancy on April 1, at the hearing the landlord insisted that the notice was served by posting it on her door on April 17, 3 days after the landlord filed her application for an order of possession. When asked why the notice to end tenancy was served after the landlord had made her application for dispute resolution, the landlord replied that it took her that length of time to find someone to witness her posting the document on the door. The witness did not testify at the hearing.

### Analysis

I accept the landlord's undisputed testimony and find that the tenant failed to pay rent in the months of February, March and April. I award the landlord \$1,350.00 in unpaid rent. I further find that the landlord is entitled to recover the filing fee paid to bring her application and I award the landlord \$50.00.

As for the claim for an order of possession, the earliest a landlord can make an application for an order of possession based on a 10-day notice to end tenancy is after the 5-day period the tenant has to dispute the notice after having received it. I accept the landlord's oral testimony that the notice to end tenancy was not served until April 17 when it was posted on the tenant's door. Even though the landlord's oral testimony conflicts with what she wrote on her application for dispute resolution, I accept the oral testimony because I had the opportunity to question the landlord about the circumstances surrounding the service of the notice. The landlord also failed to submit a copy of the notice to end tenancy for my scrutiny. I find that the application for an order of possession was made prior to the service of the notice which may have led the tenant to believe that disputing the notice was not an option for her. I dismiss without leave to reapply the landlord's claim for an order of possession based on the notice served on April 17.

### Conclusion

The claim for an order of possession is dismissed. I grant the landlord a monetary order under section 67 for \$1,400.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 20, 2010

---