

DECISION

Dispute Codes

For the landlord – OPR, MNR, MNSD, FF

For the tenant – MT, CNR

Introduction

This decision was set to deal with two applications for dispute resolution, one brought by the landlord and one brought by the tenant. Both files were due to be heard together.

The landlord seeks an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent and Order for the landlord to keep the security deposit and to recover the filing fee. The tenant has requested more time to file her application and request that the 10 Day Notice to End Tenancy is cancelled.

The hearing started at 1.30 p.m. on this date to hear the both Parties applications. The hearing went ahead as scheduled but after 10 minutes the tenant had not dialed into the conference call. Therefore, the hearing proceeded with the landlords' application. As the tenant did not appear to present the merits of her application, her application is dismissed without leave to reapply.

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 17, 2010. Mail receipt numbers were provided by the landlord's agent. The tenant was deemed to be served the hearing documents on April 22, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords' agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession?

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord is entitled to keep all or part of the security deposit?

Background and Evidence

This tenancy started on June 01, 2009. Rent is \$1,050.00 per month due on the 1st of each month. The tenant paid a security deposit of \$400.00 on April 01, 2008 at the start of her original tenancy and then paid an additional \$125.00 on June 01, 2009 when she transferred to a different unit.

The tenant paid her rent each month by authorised cheque service. The tenant did not pay all her rent for April, 2010 on the day it was due which left an outstanding balance of \$550.00. The landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent on April 05, 2010 at 10.00 a.m. The Notice was posted on the tenants' door with a witness in attendance. The Notice states that the tenant has five days to pay the outstanding rent, apply for Dispute Resolution or the tenancy would end. The tenant paid the outstanding rent on April 21, 2010 and this was accepted by the landlord and the receipt marked for use and occupancy only. The tenant has not paid rent for May, 2010 on the day it was due. The total amount of outstanding rent is \$1,050.00. The landlord is unsure at this time if rent has been paid for June, 2010 as it takes a week to process the authorised payment.

The landlord seeks an Order of Possession to take effect as soon as possible. The landlord also requests an Order to keep the tenants security deposit and interest in partial payment of the rent arrears.

Analysis

The tenant has not appeared at the hearing despite filing her own application to cancel the 10 Day Notice to End Tenancy and despite having been sent a Notice of the hearing by the landlord; I find the landlord is entitled to recover rent arrears for May, 2010 to a total amount of \$1,050.00 pursuant to s. 67 of the *Act*. I order the landlord pursuant to s. 38(4) of the *Act* to

keep the tenant's security deposit of \$525.00 and accrued interest of \$4.51 in partial payment of the rent arrears.

I further find as the landlord has been successful with his claim he is entitled to recover the \$50.00 filing fee from the tenant for his application. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for May, 2010	\$1,050.00
Subtotal	\$1,100.00
Less security deposit and accrued interest	(-\$529.51)
Total amount due to the landlord	\$570.49

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 nor apply to dispute the Notice to End Tenancy within five days. As the landlord posted the Notice to the tenants' door it was deemed to have been served on the tenant three days after posting. Therefore, the amended date to end the tenancy would be April 18, 2010.

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 amended date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$570.49**. The order must be served on the tenant 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 tenant 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: June 03, 2010.

Dispute Resolution Officer