

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's agent. The tenants did not attend.

The application was originally reviewed as a Direct Request, however, there was a question regarding the date the tenancy agreement was signed that required the Direct Request being set to a participatory hearing.

The landlord submitted written confirmation that declares that on June 10, 2010 the landlord served the tenants with the Notice of Hearing package via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenants have been served with the Notice of Hearing documents.

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 tenants 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 March 30, 2010 for a 1 year fixed term tenancy beginning on April 1, 2010 for the monthly rent of \$929.00 on the 1st of the month and a security deposit of \$464.00 was requested but not paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 8, 2010 with an effective vacancy date of April 18, 2010 due to \$929.00 in unpaid rent.

Documentary and testimonial evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months of April, May, and June 2010 and the tenant's cheque for the security deposit was returned as insufficient funds that the tenants was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on April 8, 2010 at 1:45 p.m..

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

The landlord is also claiming, as per the tenancy agreement, for compensation for insufficient funds (NSF) charges in the amount of \$25.00 for each of the three months and for the security deposit for a total of \$100.00.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on April 11, 2010 and the effective date of the notice is amended to April 21, 2010, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

As the tenancy is ending, I dismiss the portion of the landlord's application for the security deposit.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenants**. This order must be served on the tenants 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 and grant a monetary order in the amount of **\$2,937.00** comprised of \$2,787.00 rent owed; \$100.00 for NSF charges and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants 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: June 28, 2010.

Dispute Resolution Officer