

## **DECISION**

Dispute Codes            OPR, MNR, MNDC, MNSDF, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords to obtain an Order of Possession, a Monetary Order for unpaid rent and for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*, given in person to the female tenant on May 11, 2010. The tenants were deemed to be served the hearing documents on this day.

The landlords and their agent appeared, gave affirmed testimony, was provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenants, 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

- Are the landlords entitled to an Order of Possession?
- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed in bank charges?
- Are the landlords entitled to keep the security deposit?

### Background and Evidence

This tenancy started on September 01, 2009. This is a fixed term tenancy which is due to expire on August 31, 2010. The rent for this unit is \$1,300.00 per month and is due on the first of each month. The tenants paid a security deposit of \$650.00 on August 28, 2009.

The landlord's agent testifies that the tenants paid rent for April, 2010 by cheque. However, the cheque was returned as there were insufficient funds available. A 10 Day Notice to End Tenancy was issued and served on April 03, 2010. The landlord spoke to the tenant and a payment plan was agreed. However the tenants did not pay rent when it was due for May, 2010 and defaulted on the payment plan agreed. On May 03, 2010 another 10 Day Notice was issued and served on the tenants this included outstanding rent for April and May, 2010 and bank charges incurred by the landlord's agent.

The landlords state the tenants have not paid rent for June, 2010 however the tenants did make a payment of \$1,500.00 on June 18, 2010.

The landlords seek an Order of Possession for unpaid rent.

The landlords seek a Monetary Order to recover the outstanding rent of \$2,400.00, bank fees of \$90.94 and the cost of filing their application of \$50.00.

The landlords seek an Order allowing them to keep the tenants security deposit in partial payment of the outstanding rent.

### Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I find the landlords have established their claim for unpaid rent of \$2,400.00 for April, May and June, 2010 and they are entitled to a monetary award for this amount pursuant to section 67 of the *Act*.

I further find the landlord is entitled to recover **\$90.94** in bank fees for a returned cheque and other fees incurred when the tenant did not pay rent on time 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 \$650.00 in partial satisfaction of the rent arrears.

As the landlords have been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a monetary order for the balance owing as follows:

Outstanding rent for April, May and June, 2010	\$2,400.00
Filing fee	\$50.00
Subtotal	\$2,540.94
Less security deposit	(-\$650.00)
<b>Total amount due to the landlord</b>	<b>\$1,890.94</b>

I accept that the tenants were 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. As this Notice was given personally to the tenant's it is deemed served on the same day. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 and grant the landlords an order of possession pursuant to section 55 of the *Act*.

### Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,890.94**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenants. This order must be served on the Respondents 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 28, 2010.

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Dispute Resolution Officer