

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 tenants did not attend.

The landlord provided written confirmation that the tenants were served with the Notice of Hearing documents via registered mail on June 21, 2010. Section 90 of the *Residential Tenancy Act (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 Dispute Resolution Direct Request Proceeding 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 *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 February 6, 2010 for a month to month tenancy beginning on February 1, 2010 for the monthly rent of \$1,800.00 due on the 1st of the month and a security deposit of \$475.00 was paid on January 23, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 7, 2010 with an effective vacancy date of April 17, 2010 due to \$2,750.00 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 March and April 2010 and that the tenants was served a 10 Day Notice to End Tenancy for Unpaid Rent by mail on April 7, 2010.

The landlord also testified the tenants have made payments on April 7 (\$950.00), April 23 (\$850.00), May 3 (\$950.00), and June 14, 2010 (\$950.00). The landlord issued receipts for each of those payments and marked them as for Use and Occupancy Only. The landlord testified the current arrears in rent and late fees are in the amount of \$4,550.00.

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 pay the rent in full or apply to dispute the Notice to End Tenancy within five days.

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 10, 2010 and the effective date of the notice is amended to April 20, 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.

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 in the amount of **\$5,000.00** comprised of \$4,550.00 rent and late fees 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 \$475.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$4,525.00**. 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: July 06, 2010.

Dispute Resolution Officer