

## **DECISION**

Dispute Codes          OPR, MNR, MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent, a Monetary Order for money owed or compensation for damage or loss under the Act, an Order to keep all or part of the security deposit and a Monetary Order to recover the filing fee.

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 May 21, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on May 26, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for Money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

### Background and Evidence

This tenancy started on December 01, 2007. Rent for this unit is now \$881.00 per month and is due on the first of each month. The tenant paid a security deposit of \$425.00 on November 26, 2007.

The landlords' agent testifies that the tenant has not paid rent in full for May, 2010 and has an outstanding balance due of \$481.00. The tenant has also incurred a late penalty fee of \$25.00 for May as per the clause in the tenancy agreement. The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent. This notice was posted to the tenants' door on May 11, 2010. The Notice stated that the tenant had five days to pay the outstanding rent, dispute the Notice by making an application for Dispute Resolution or the tenancy would end on the effective date of the Notice.

The landlords' agent testifies that the tenant did not pay the outstanding rent and has remained at the rental unit. The landlords' agent testifies that the tenant paid \$400.00 on June 01, 2010 and has an outstanding balance for June of \$481.00. This money was accepted for use and occupancy only and did not reinstate the tenancy. The landlord seeks to amend their application to take this payment into account. The landlord also seeks rent for July, 2010 of \$881.00 as the tenant has overhired at the unit. The landlord seeks late penalty fees of \$25.00 for June and July, 2010.

The landlord seeks to keep the tenants security deposit of \$425.00 and accrued interest in partial payment of the rent arrears.

The landlord requests an Order of Possession to take effect as soon as possible.

The landlord seeks to recover the filing fee of \$50.00.

The tenant does not dispute the landlords claim for unpaid rent and hopes to come to a resolution with the landlord about paying the rent.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; Section 26(1) of the Act states: *a tenant must pay rent when it is due under the tenancy*

*agreement, whether or not the landlord complies with the Act, the regulations or tenancy agreement, unless the tenant has a right under the act to deduct all or a portion of rent.*

Therefore, I find that the landlord has established a claim for unpaid rent and is entitled to a Monetary Order to recover rent arrears for May, June and July 2010 of **\$1,843.00** pursuant to section 67 of the *Act*. I further find the landlord is entitled to recover the sum of \$75.00 in late fees for May, June and July, 2010 pursuant to section 67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$425.00 and accrued interest of \$7.03 in partial payment of the rent arrears.

As the landlord has been successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for May, June and July, 2010	\$1,843.00
Filing fee	\$50.00
Subtotal	\$1,968.00
Less security deposit and accrued interest	(-\$432.03)
<b>Total amount due to the landlord</b>	<b>\$1,535.97</b>

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. As this Notice was posted on the tenants' door it was deemed served three days after posting and therefore the amended effective date of the notice would be May 24, 2010. The tenant 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 tenant is 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 landlord an order of possession.

#### Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1535.97**. The order must be served on the respondent 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 Respondent 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: March 02, 2010.

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Dispute Resolution Officer