

## **DECISION**

Dispute Codes – OPR, CNR, MNR, MNSD, MNDC, FF

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution. The landlord applied for an order of possession and a monetary order due to unpaid rent. The tenant applied to cancel the notice to end tenancy.

The hearing was attended by the landlord's agent only. The tenant did not attend. As the tenant had submitted her own Application for Dispute Resolution, I accept that tenant was aware of this hearing date and time.

### **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 tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel the 10 Day Notice to End Tenancy issued on May 14, 2010 for unpaid rent, and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 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 July 16, 2009 for a 1 year fixed term tenancy beginning on July 25, 2009 and converted to a month to month tenancy on July 1, 2010 for the monthly rent of \$1325.00 due on the 1<sup>st</sup> of the month and a security deposit of \$662.50 was paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on May 14, 2010 with an effective vacancy date of May 25, 2010 due to \$1,987.50 in unpaid rent; and
- A copy of a Freehold Transfer of the rental unit from the previous landlord to the current landlord effective March 16, 2010.

Documentary and testimonial evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of April, May, June and July 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on May 14, 2010.

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 apply to dispute the Notice to End Tenancy on May 26, 2010.

### Analysis

I accept the rental unit ownership was transferred from the landlord who the tenant signed the tenancy agreement with to the current landlords as outlined in the transfer documents.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on May 17, 2010 and the effective date of the notice is amended to May 27, 2010, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

Despite the fact that tenant submitted an application to dispute the notice, she did so 9 days after received of the notice and therefore, 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.

While the landlord's agent notes the tenant is still living in the rental unit as of this hearing, she could not explain if rent for April 2010 is still owed, as such, I dismiss this portion of the landlord's application.

### Conclusion

I find that the landlord is entitled to an Order of Possession 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.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,025.00** comprised of \$3,975.00 rent 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 \$662.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,362.50**. This order must be served on the tenant 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 13, 2010.

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Dispute Resolution Officer