



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenant - MT, CNLC, CNR, MNDC, OLC, SS, O, PSF, RPP, LRE, OPT, AAT, LAT

For the landlord – OPR, MNR, MNSD

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together.

First of all it is my decision that I will not deal with all the issues that the tenant has put on the application as most of them are unrelated to the main issues which are: more time to file an application to cancel the Notice to End Tenancy and to cancel the Notice to End Tenancy. I therefore will deal with these two issues and I dismiss the remaining unrelated disputes with liberty to re-apply.

The landlord seeks an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent and an order to keep the security deposit.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

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:

Preliminary Issues

On both applications the tenants' first name has been added as his user name and not his legal name. Both parties consent to the tenants' first name being amended on the application and my decision and order reflects this name change.

Issues(s) to be Decided

- Is the tenant entitled to more time to file his application to cancel the Notice to End Tenancy?
- If so is the tenant entitled to cancel the Notice to End Tenancy?
- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This tenancy started on January 01, 2010 although the tenant moved into the rental unit on December 15, 2009 and paid a prorated rent for this period. The monthly rent for this unit is \$680.00 which is due on the first of each month. The tenant paid a security deposit of \$340.00 on December 15, 2009.

The tenant has requested more time to file his application to cancel the Notice to End Tenancy. The tenant states he has been unwell and was at the doctors so could not file his application within five days of receiving the 10 Day Notice. The tenant was served the 10 Day Notice to End Tenancy on June 07, 2010 and this was posted to the tenants' door and deemed served on June 10, 2010. The tenant filed his application on June 16, 2010.

The tenant seeks to cancel the Notice to End Tenancy. He does not dispute that he owes rent to the landlord for June, July and August, 2010.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlords' agent testifies that the tenant was served this 10 Day Notice for unpaid rent on June 07, 2010 as he had failed to pay rent for June, 2010 on the day it was due. The landlords' agent states since that time the tenant has also failed to pay rent for July and August and the total amount of outstanding rent is now \$2,040.00. The landlord seeks a Monetary Order to recover this amount and request an Order to allow them to keep the tenants security deposit in partial payment of the arrears.

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

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 66 of the Act states that a director may extend a time limit established by this Act only in exceptional circumstances. It is my decision that the tenant has not provided any evidence to support his application for more time to cancel the Notice and therefore the tenants' application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

I find that the landlord is entitled to recover rent arrears for June, July and August, 2010 of **\$2,040.00** and a Monetary Order will be issued to the landlord pursuant to s. 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 \$340.00 in partial payment of the rent arrears.

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

Outstanding rent for June, July, August, 2010	\$2,040.00
Total amount due to the landlord	\$1,700.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 46 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



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

posted on the tenants' door on June 07, 2010 it was deemed served three days after posting and therefore the amended date of the notice would be June 20, 2010. The tenant did not pay the outstanding rent within five days of receiving this Notice nor did he 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 monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,700.00**. The order must be served on the tenant 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 tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The tenants' application for more time to cancel the 10 Day Notice; and to cancel the 10 Day Notice is dismissed without leave to reapply.

The tenant is at liberty to file a new application to consider the remainder of his application not heard today.

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: August 11, 2010.

Dispute Resolution Officer