



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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's agent only. The tenant did not attend.

The landlord's agent testified that he served the tenant with the notice of this hearing via registered mail. I accept that the tenant has been served with the Notice of Hearing 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 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)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on October 2, 2009 for a 1 year and ½ month fixed term tenancy beginning on October 16, 2009 for the monthly rent of \$1,400.00 due on the 1st of the month and a security deposit of \$700.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 10, 2010 with an effective vacancy date of June 20, 2010 due to \$1,400.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of June 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 June 10, 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 not apply to dispute the Notice to End Tenancy within five days.

The landlord testified the tenant had paid both June 2010 and July 2010 rent on July 6, 2010 but that tenant has not yet paid August 2010 rent. While the tenant ledger submitted by the landlord states the tenant paid the landlord \$2,850.00 for June and July rent and to "reimburse filing fee", the landlord testified that amount was for NSF cheques.

The tenancy agreement allows for \$25.00 to be charged to the tenant for returned cheques, however, in the entire ledger there is no listing for any returned cheque charges despite the tenant's cheques being returned for nearly every month of the tenancy.

Analysis

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 June 13, 2010 and the effective date of the notice is amended to June 13, 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*.

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.

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 **\$1,400.00** comprised of rent owed

As per the landlord's evidence I find the landlord has already recovered the filing fee for this application from the tenant and I dismiss this portion of the landlord's application.

I order the landlord may deduct the security deposit and interest held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$700.00**. 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: August 16, 2010.

Dispute Resolution Officer