



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 to obtain an Order of Possession, a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of 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*.

The landlords' agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the 10 Day Notice to End Tenancy?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?



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Background and Evidence

This month to month tenancy started on September 21, 2002. The monthly rent is now \$1,010.00 per month and is due on the first of each month. The tenant paid a security deposit of \$487.50 on September 18, 2002.

The landlord testifies that the tenant has been frequently late paying his rent and many of his rent cheques have been returned as there was insufficient funds available (NSF). On May 01, 2010 the tenant owed a total of \$2,120.00 in unpaid rent. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on May 06, 2010. This was posted on the tenants' door and sent to him by registered mail. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on May 18, 2010.

The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant owed rent for June, 2010 of \$1,010.00 and made a payment of \$500.00 on June 06, 2010. The tenant did not pay rent when it was due for July, 2010 of \$1,010.00 but did make partials payment towards his arrears of \$910.00 on July 05, 2010 and \$600.00 on July 16, 2010. The tenant made a payment of \$1,010.00 on August 01, 2010. The landlord has provided evidence of a letter sent to the tenant on June 16, 2010 which states that the partial payments made and any future rent paid is accepted for the use and occupancy of the rental unit and not for an extension of the tenancy. At this time the tenant owes a balance of unpaid rent to a total sum of \$2,130.00.

The landlord seeks to keep the tenants security deposit and any accrued interest in partial settlement of his claim. The landlord also seeks to recover his filing fee.

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

Analysis

The tenant did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears of **\$2,130.00** 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 \$487.50 and accrued interest of \$17.27 in partial payment of the rent arrears.

As the landlord has been successful in this matter, they are 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 June and July, 2009	\$2,130.00
Less security deposit and accrued interest	(-\$504.77)
Total amount due to the landlord	\$1,675.23

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 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. 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 s. 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 pursuant to s. 55 of the *Act*.

Conclusion



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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 **\$1,675.23**. 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.

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 31, 2010.

Dispute Resolution Officer