



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNDC, 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 and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement. The landlord also seeks an Order to keep all or part of the security deposit and pet damage deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent to the tenants by registered mail on August 11, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on August 16, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord's 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 tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover rent owed?
- Is the landlord entitled to a Monetary Order for money owed for parking fees and late fees?
- Is the landlord entitled to keep the security deposit and pet damage deposit?



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Background and Evidence

This fixed term tenancy started on November 01, 2009. Rent for this unit is \$1,329.00 per month with additional parking fees of \$20.00 per month and these payments are due on the first of each month. The tenants paid a security deposit of \$664.00 on October 26, 2009 and a pet damage deposit of \$664.00 on October 30, 2009.

The landlords' agent testifies that the tenants did not pay their rent for June, 2010 of \$1,329.00 on the day it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on June 03, 2010. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on June 13, 2010. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have not paid rent for July, August and September, 2010 to the amount of \$3,987.00. The landlords' agent has requested to amend his application to recover the unpaid rent for September, 2010.

The landlords' agent testifies that the tenants have made some payments towards their rental arrears. They paid \$1,700.00 on July 23, 2010, \$100.00 on July 28, 2010 and \$100.00 on August 12, 2010. These payments were accepted by the landlord for use and occupancy only and the receipt indicates this. The total amount of unpaid rent is now \$3,416.00.

The landlords' agent testifies that the tenants also owe \$80.00 in rent for their parking from June to September, 2010 and seeks to recover this from the tenants.

The landlords' agent testifies that there is a clause in the tenancy agreement that states the landlord will charge the tenant \$25.00 for each month rent is late. As the tenants have been late with their rent the landlord seeks to recover \$100.00 in late fees from June to September, 2010.

The landlord has applied to retain the tenant's security deposit and pet damage deposit in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I find that the landlord is entitled to recover rent arrears for June, July, August and September, 2010 of **\$3,416.00** pursuant to s. 67 of the *Act*. I have allowed the landlords' amended claim for September, 2010 as the tenants continue to reside at the rental unit and would be aware that rent was due for this month also.

I further find the landlord is entitled to recover **\$100.00** in late fees and **\$80.00** in parking fees for June, July, August and September, 2010 pursuant to s.67 of the *Act*.

I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit and pet damage deposit of \$1,328.00 in partial payment of the rent arrears.

As the landlord has been successful in this matter, he 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 June, July, August and September, 2010	\$3,416.00
Late fees	\$100.00
Subtotal	\$3,596.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$1,328.00)
Total amount due to the landlord	\$2,318.00

I accept that the tenants were 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 tenants have five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting and therefore the amended date of the Notice would be June 16, 2010. The tenants did not pay the



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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 tenants are 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 **\$2,318.00**. The order must be served on the respondents 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 tenants. This order must be served on the Respondents 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: September 27, 2010.

Dispute Resolution Officer