

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 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 August 18, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on August 23, 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 tenant, 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?
- Is the landlord entitled to a Monetary Order to recover rent incentives given to the tenant?

Residential Tenancy Branch
Ministry of Housing and Social Development

- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on March 01, 2010. Rent for this unit is \$749.00 per month and the tenant was given a rent reduction as an incentive to rent for a fixed term which meant the rent he paid was \$709.00 per month. Rent is due on the first of each month. The tenant paid a security deposit of \$374.00 on February 01, 2010.

The landlords' agent testifies that the tenant did not pay rent for July 2010 of \$709.00 on the day it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on July 05, 2010. This was posted to the tenants' door and was deemed to have been served three days after posting. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on July 15, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for August, September and October 2010 to the amount of \$2,247.00. The landlords' agent has requested to amend his application to recover the unpaid rent for October as the tenant has continued to reside in the unit. The landlords' agent testifies that the tenant did make a payment of \$200.00 on August 30, 2010. The total amount of unpaid rent is now \$2,796.00.

The landlords' agent testifies that there is a clause in the tenancy agreement that states if the tenant fails to pay rent on the first of each month or is two months late with rent that he will lose the rent incentive and the landlord will claim back the rent incentives paid to the tenant during the tenancy. As the tenant was late on more than two occasions and has failed to pay rent since July, 2010 the landlord seeks to recover the sum of \$749.00 for each month since July, 2010 and the sum of \$160.00 from March to June, 2010 in incentives already paid at \$40.00 per month.

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. The landlord seeks to recover \$100.00 in late fees for July to October, 2010

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlord has applied to retain the tenants' security 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 tenant did not appear at the hearing, despite having been given 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 for July, August, September and October, 2010 of **\$2,796.00** pursuant to section 67 of the *Act*. I further find the landlord is entitled to recover **\$100.00** in late fees for December, 2009 and January, February and March, 2010 pursuant to s.67 of the *Act*. I have allowed the landlords' amended claim for October, 2010 as the tenant continues to reside at the rental unit and would be aware that rent was due for this month.

I further find the landlord is entitled to recover **\$160.00** to recover the rental incentives of \$40.00 per month from March to June, 2010 pursuant to s.67 of the *Act*.

I further find the landlord is entitled to recover **\$100.00** in late fees for July to October, 2010 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 \$374.00 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 and late fees	\$2,896.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$374.00)

Total amount due to the landlord	\$2,732.00
----------------------------------	------------

I accept that the tenant was 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 tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenants' door it was deemed served three days after posting and therefore the amended date of the notice is July 18, 2010. 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 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 **\$2,732.00**. The order must be served on the respondent 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 Respondent 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: October 04, 2010.

Dispute Resolution Officer