



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, a monetary order for unpaid rent and an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The Agents for the Landlord and one Tenant appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I find that both Tenants were served notice for the hearing in the time and manner in accordance with the Act; however only one Tenant appeared.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the affirmed testimony of the Agent for the Landlord and affirmation of the one Tenant, I find that the Tenants were served with a Notice to End Tenancy for non-payment of rent on September 1, 2010, (the "Notice").

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenants had five days to dispute the Notice. I note the effective move out date indicated on the Notice is September 15, 2010.

The Landlord testified that the monthly rent is \$850.00, that the Tenants made a partial payment in July 2010 and no payment in August, September, October and have applied for the November rent as well. The Landlord testified that the current unpaid rent is \$3,735.00.

The Tenant JT testified, saying he could not dispute this amount and acknowledged not paying rent.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenants have not paid the outstanding rent owed to the Landlord and failed to apply to dispute the Notice, and therefore, are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, on September 15, 2010.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Landlord has established a total monetary claim of **\$2,935.00** comprised of unpaid rent of \$2,885 and the \$50.00 fee paid by the Landlord for this application. I find the Landlord is not entitled to the November 2010, rent as the same is not due and payable, but is at liberty to make an application for this amount when due.

I order that the Landlord retain the deposit of **\$425.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$2,510.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants failed to pay rent and did not apply to dispute the Notice to End Tenancy. The Tenants are presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and a monetary order for the balance due.

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*.

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Dated: October 25, 2010.

Dispute Resolution Officer