



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on a 10 day Notice to End Tenancy for unpaid rent, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties 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.

Issue(s) to be Decided

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

Background and Evidence

Based on the testimony of the parties, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on October 5, 2010, by posting on the door.

Under the Act this is deemed served three days later, or on October 8, 2010. The Notice sets out that the Tenant owed \$395.00 in unpaid rent for October of 2010.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant made a payment of \$200.00 towards the \$395.00 due on October 16, 2010. Therefore, at the outset of the hearing the Landlord was requesting \$195.00 as a monetary order, comprised of the \$170.00 outstanding rent for October and one late payment fee of \$25.00.

The Tenant's Advocate requested that the Agent for the Landlord explain the ledger and amounts due. The Agent went through the ledger with the Tenant.

Analysis

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

I find the Tenant has not paid outstanding rent and the late payment fee of \$195.00. I accept the ledger of the Landlord and the Agent's explanation of the amount due.

As the Tenant did not apply to dispute the Notice and the rent has not been paid in full, 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 I find that the Landlord is entitled to an order of possession and a monetary order for **\$245.00**, comprised of \$195.00 in rent and one late payment fee, plus the \$50.00 filing fee for the Application.

The Agent for the Landlord consented that the order of possession be dated for November 12, 2010. The Agent also agreed she would not enforce the order of possession for the rental unit if the Tenant paid the Landlord \$245.00 before November 12, 2010. If the Tenant does not pay the \$245.00 before November 12, 2010, the Landlord may enforce the order and the Tenant must vacate the rental unit.

Furthermore, if the Tenant does not pay the \$245.00 prior to November 12, 2010, I order under sections 67 and 72 of the Act, that the Landlord may retain **\$245.00** from the deposit and interest held, and must deal with the balance in accordance with the Act.

The Tenant was also cautioned regarding the repeated late payment of rent provisions under the Act.

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: November 05, 2010.

Dispute Resolution Officer