

DECISION

Dispute Codes – OPR, MNR, MNSD, FF

Introduction

This matter was originally reviewed by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

In my decision of October 20, 2010, I found the tenancy agreement did not stipulate the due date of the rent and determined a participatory hearing was necessary to determine this date. As such the matter was adjourned to this hearing.

This hearing was conducted via teleconference and was attended by the landlords. The tenant did not attend.

The landlord testified that the notice of hearing documents were served on the tenant by registered mail and that the second respondent named is not tenant but rather an occupant. I have amended the landlord's application to exclude the occupant.

As this original application was reviewed as a direct request and is now a participatory hearing, I also allow the landlords' amendments to include consideration to recover the filing fee and to set the security deposit off against any debt owed by the tenant resulting from this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on July 30, 2010 for a 1 year fixed term tenancy beginning on August 1, 2010 for the monthly rent of 750.00, there is no indication in the tenancy agreement as to when rent is due and a security deposit of \$275.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 24, 2010 with an effective vacancy date of October 4, 2010 due to \$750.00 in unpaid rent that was due on September 5, 2010.

The landlord confirmed in testimony that half the rent (\$375.00) is due on the 5th of the month and the other half is due on the 20th of the month.

Documentary evidence and testimony filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of September, October and the first installment of November's rent and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on September 24, 2010 at 7:48 p.m. and that this service was witnessed by a third party.

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 apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on September 27, 2010 and the effective date of the notice is amended to October 7, 2010, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

Conclusion

I find that the landlord is entitled to an Order of Possession 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.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,925.00** comprised of \$1,875.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$275.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,650.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: November 05, 2010.

Dispute Resolution Officer