



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 to obtain an Order of Possession, a Monetary Order for unpaid rent, 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 October 14, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on October 19, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her 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*. All of the testimony and documentary evidence was carefully considered.

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 unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?



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Background and Evidence

This month to month tenancy started on August 01, 2006. Rent for this unit is \$325.00 which is due on the first of each month. The tenant paid a security deposit of \$163.00 on August 28, 2006.

The landlord testifies that the tenant owed an amount of rent up to September 01, 2010 of \$1,300.00. The landlord states the tenant was served with a Notice to End Tenancy on September 20, 2010 in person. This Notice states the tenant had five days to pay the outstanding rent or apply to dispute the Notice or the tenancy would end on September 30, 2010.

The landlord claims the tenant did not dispute the Notice but did pay all the outstanding rent owed on November 08, 2010. This was accepted by the landlord for use and occupancy only.

The landlord withdraws her application for a Monetary Order for unpaid rent and an Order to keep the tenants security deposit. The landlord seeks an Order of Possession to take effect on November 30, 2010.

Analysis

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. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days. However, the tenant paid the outstanding rent



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on November 08, 2010 which the landlord accepted for use and occupancy only and therefore did not reinstate the tenancy.

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 ISSUE an Order of Possession in favour of the landlord effective on **November 30, 2010**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application and a Monetary Order has been issued for this amount. This Order must be served on the tenant and is enforceable through the Provincial Court (small claims) 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 10, 2010.

Dispute Resolution Officer