



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 landlords to obtain an Order of Possession, a Monetary Order for unpaid rent. The landlords also seek an Order to keep all or part of the security deposit and to recover the cost of the filing fee. At the outset of the hearing the landlords withdrew their application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; they were handed to the tenant in person on October 18, 2010. The landlord attending the hearing gave affirmed testimony that he witnessed the service of the hearing documents to the tenant.

One of the landlords 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 owed and late fees?
- Is the landlord entitled to keep the security deposit?



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Background and Evidence

This month to month tenancy started on September 15, 2010. Rent for this unit is \$500.00 per month and is due on the first of each month. The tenant paid a security deposit of \$250.00 on September 15, 2010. The landlord attending testifies that they had a verbal tenancy agreement with the tenant.

The landlord testifies that the tenant has not paid rent at all since the start of the tenancy. The tenant agreed to pay \$250.00 for the half months rent for September but failed to do so. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on October 01, 2010. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice stated that the tenant owed rent for September, 2010. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 01, 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 October or November, 2010 to the amount of \$1,000.00. The total amount of unpaid rent is now \$1,250.00.

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 landlords are entitled to recover rent arrears for September, October and November, 2010 of **\$1,250.00** pursuant to s.67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$250.00 in partial payment of the rent arrears.



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As the landlords have been successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlords will receive a monetary order for the balance owing as follows:

Outstanding rent for September, October and November, 2010	\$1,250.00
Subtotal	\$1,000.00
Plus filing fee	\$50.00
Total amount due to the landlords	1,050.00

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 would be October 13, 2010 pursuant to s. 53 of the *Act*. 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 monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,050.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.



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I HEREBY ISSUE an Order of Possession in favour of the landlords 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: November 15, 2010.

Dispute Resolution Officer