



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 and a Monetary Order for unpaid rent. The landlord also seeks 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 was done in accordance with section 89 of the *Act*, and were sent to the tenant by registered mail on October 20, 2010 the landlord has provided Canada Post tracking information which shows that the tenant received these documents on October 21, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

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 February 01, 2009. Rent for this unit is now \$928.00 per month, which includes parking, and is due on the first of each month. The tenant paid a security deposit of \$440.00 on January 26, 2009.

The landlord testifies that the tenant owes a balance of rent for September, 2010 of \$448.00 and did not pay rent for October, 2010 of \$928.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on October 02, 2010. This was handed to the tenant in person. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 12, 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 November, 2010 to the amount of \$928.00. The landlord has requested to amend her application to recover the unpaid rent for November also. The total amount of unpaid rent is now \$2,304.00.

The landlord testifies that there is a clause in the tenancy agreement that states the landlord will charge the tenant \$25.00 for each month rent is late. The landlords' submissions state that she has applied late fees of 9.00 for late rent in July, 2010 and seeks \$25.00 per month in late fees for September, October and November, 2010 to the sum of \$84.00.

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.

The tenant does not dispute the landlords' claims. He states he has been going through a difficult time and has been unable to pay his rent.



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Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 26 of the Act says a tenant must pay rent on the day it is due under the tenancy agreement. In this case rent is due on the first day of each month. The tenant does not dispute that he owes rent to the landlord. Therefore, I find that the landlord is entitled to recover rent arrears for September, October and November, 2010 to the sum of **\$2,304.00** pursuant to s.67 of the *Act*. I have allowed the landlords' amended claim for November, 2010 as the tenant continues to reside at the rental unit and would be aware that rent was due for this month.

I further find the landlord is entitled to recover **\$84.00** in late fees for July, September, October and November, 2010 pursuant to s.67 of the *Act*.

I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit of \$440.00 in partial payment of the rent arrears.

As the landlord has been successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

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

Outstanding rent for December, 2009, January February and March, 2010	\$2,304.00
Filing fee	\$50.00
Less security deposit and accrued interest	(-\$440.00)
Total amount due to the landlord	\$1,998.00



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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.

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 pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,998.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord 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 16, 2010.

Dispute Resolution Officer