



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNDC, MNDS, FF, O

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, and for money owed or compensation for damage or loss under the Residential tenancy Act (Act), regulations or tenancy agreement. 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, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on October 22, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on October 27, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agents appeared, gave their testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. There was no appearance for the tenants, 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 rent owed?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- 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, 2009. This was a fixed term tenancy which ended on September 30, 2010. The tenants and landlord entered into a new fixed term tenancy on October, 01, 2010. Rent for this unit is \$950.00 per month and is due on the first of each month. The tenant paid a security deposit of \$467.50 on August 28, 2009.

The landlords' agent testifies that the tenants did not pay rent for October, 2010 on the day it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on October 12, 2010. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on October 22, 2010. The tenants did not pay the outstanding rent or dispute the Notice within five days. However the tenant did pay \$800.00 on October, 29, 2010. This left a balance of rent owed for October of \$150.00. Since that time the tenants have not paid rent for November, 2010 to the amount of \$950.00. The landlord has also applied to recover unpaid rent for December, 2010 of \$950.00. The total amount of unpaid rent at this point is \$1,100.00.

The landlords' agent 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 landlord seeks to recover \$50.00 in late fees for October and November, 2010. The landlords' agent also states there is an additional charge of \$5.00 per month for a storage locker which has not been paid for October or November and she seeks to recover the sum of \$10.00 for this fee.

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.



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Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I accept that the tenants were 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 tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting and therefore the amended date of the notice would be October 25, 2010. The tenants 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 tenants are 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.

With regard to the landlords claim for a monetary award; I find that the landlord is entitled to recover rent arrears for October and November, 2010 of **\$1,100.00** pursuant to section 55 of the *Act*. However, with regard to the landlords claim for unpaid rent for December 2010, I find the landlord is premature in applying for Decembers rent as the tenancy will end in November. If the tenants fail to move out after being served with the Order of Possession and they remain in the unit in December then the landlord is at liberty to reapply for Decembers rent.

I further find the landlord is entitled to recover **\$50.00** in late fees for October and November, 2010 and **\$10.00** for locker fees 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 \$467.50 in partial payment of the rent arrears.

As the landlord has 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*.



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

Outstanding rent for October and November, 2010	\$1,100.00
Subtotal	\$1,160.00
Filing fee	\$50.00
Less security deposit	(-\$467.50)
Total amount due to the landlord	\$742.50

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 **\$742.50**. The order must be served on the respondents 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 tenants. This order must be served on the Respondents 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 19, 2010.

Dispute Resolution Officer