



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 tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on November 16, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on November 21, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

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:

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Both parties agree that this month to month tenancy started on October 01, 2008. Rent for this unit is \$850.00 per month and is due on the first of each month. The tenant paid a security



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deposit of \$425.00 on September 28, 2008. The landlord testifies that he would allow the tenants to pay their rent late due to the date the male tenant received his wages which would often be around the 10th of each month.

The landlord testifies that the tenants did not pay rent for October or November, 2010 on the date it was due. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 04, 2010. This was sent to the tenants by registered mail and was deemed to have been served five days after posting. This Notice stated that the tenants owed rent of \$1,700.00. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on November 19, 2010. The landlord states the tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants have not paid their rent that was due on December 01, 2010.

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 and to recover the filing fee paid for this application.

The tenant attending does not dispute that they owe rent to the landlord. He states he has been having some financial difficulties that have prevented them paying rent on time but hopes he will be able to pay most of the rent arrears on December 05, 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.



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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*.

As the tenants do not dispute that they owe rent to the landlord I find the landlord is entitled to a Monetary Order to recover unpaid rent to the sum of **\$1,700.00** pursuant to section 67 of the *Act*. As this hearing was held on the first day of December, 2010 when rent would be due again I will not deal with any unpaid rent for December as the tenant still has the remainder of the day to pay this rent.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of **\$425.00** and accrued interest of **\$1.65** in partial payment of the rent arrears.

As the landlord has been successful in this matter, he is 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 October and November, 2010	\$1,700.00
Less security deposit and accrued interest	(-\$426.65.00)
Subtotal	\$1,273.35
Plus filing fee	\$50.00
Total amount due to the landlords	\$1,323.35

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 **\$1,323.35**. 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: December 01, 2010.

Dispute Resolution Officer