



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*; they were sent to the tenants by registered mail on November 17, 2010. The landlord has provided copies of the tracking information and declares that the tenants signed for the hearing documents on November 18, 2010.

The landlords' agent 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 tenants, 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 unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

This month to month tenancy started on April 04, 2010. Rent for this unit is \$1,175.00 per month and is due on the first of each month. The tenants paid a security deposit of \$587.50 on April 04, 2010.



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The landlords' agent testifies that the tenants have not paid rent for September, October, November and December, 2010. The landlords' agent also claims the tenants have kept a dog without the landlords' permission when the tenancy agreement clearly states no dogs are allowed in the rental unit. The landlord has provided a copy of a breach letter sent to the tenants on August 25, 2010 asking them to remove the dog immediately. However, the landlords' agent states the dog has remained at the rental unit and the tenants continue to be in breach of the tenancy agreement.

The landlord issued a One Month Notice to End the Tenancy for cause on September 15, 2010. This was posted to the tenant's door and was deemed to have been served three days after posting. The reasons given on this Notice to End Tenancy are that the tenants are repeatedly late paying rent and have breached a material term of the tenancy agreement which was not corrected after reasonable time was given to do so. The landlord requests an Order of Possession based on the reasons given on the One Month Notice to End Tenancy.

The landlord seeks a Monetary Order to recover the unpaid rent for September, October and November, 2010. The landlord also seeks to amend his application to include unpaid rent for December, 2010 as the tenants have also failed to pay this on the day it was due. The total amount of the landlords' amended monetary claim is now \$4,700.00.

The landlord has applied to retain the tenants' security deposit of \$587.50 in partial payment towards the rent arrears. And to recover the filing fee of \$50.00 paid for this application.

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 find that the landlord is entitled to recover rent arrears for September, October and November, 2010 of **\$3,525.00**. I have also allowed the landlord to amend his monetary claim for unpaid rent for December, 2010 as the tenants continue to reside in the rental unit and would be aware that rent was due for



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December, 2010. Consequently the landlord is entitled to a monetary award of \$4,700.00 for unpaid rent 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 \$587.50 in partial payment of the rent arrears.

I further find the tenants are in breach of a material term of the tenancy agreement as they have kept a dog in the unit without the landlords' permission and in full knowledge that dogs are not permitted in the rental unit. The landlord asked the tenants to remove the dog and the tenants have not complied with this written request.

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, November, December 2010	\$4,700.00
Plus filing fee	\$50.00
Total amount due to the landlords	\$4,162.50

I accept that the tenants were served the One Month Notice to End Tenancy for cause pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had 10 days to apply for Dispute Resolution to cancel the Notice or they are presumed to have accepted the Notice and the tenancy will end on the effective date of the Notice. There is no evidence to show that the tenants have applied to dispute the Notice within the allowable 10 days and the landlord has provided sufficient evidence to support the reasons given on the Notice. Therefore the Notice remains in force and effect and the landlord is entitled to an Order of Possession pursuant to section 55 of the *Act*.

Conclusion



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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 **\$4,162.50**. 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 landlords 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: December 02, 2010.

Dispute Resolution Officer