



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 for an Order of Possession, a Monetary Order to recover unpaid rent, an Order to keep all or part of the security deposit and to recover the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with s. 89 of the *Act*, sent via registered mail on November 20, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on November 25, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and his wife appeared, gave affirmed testimony, were provided the opportunity to present their 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*.

All of the testimony and documentary evidence was carefully considered. 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?
- Is the landlord entitled to a Monetary Order to recover the unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit and interest?



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Background and Evidence

This tenancy started on August 15, 2010. This is a month to month tenancy and rent is \$650.00 per month due on the 1st of each month. The tenant paid a security deposit of \$325.00 on August 15, 2010.

The landlord testifies that the tenant did not pay the balance of rent owed for October of \$425.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on October 31, 2010. This was posted on the door of the tenants unit and is deemed to have been served on November 03, 2010 the third day after posting. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on November 10, 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 and the landlord has requested to amend his application to include rent arrears for November to the sum of \$650.00.

The landlord states it appears as if the tenant may have moved out but she still has belongings in the unit. The landlord is unable to re-rent the unit until the tenant has removed her belongings and so the landlord seeks an Order of Possession to take effect as soon as possible.

The landlord seeks to keep the tenants security deposit in partial payment towards the rent arrears and recover his filing fee.

Analysis

The tenant did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for October, 2010 of \$450.00 and I have allowed the landlords amended application to recover rent arrears for November, 2010 of \$650.00 as the tenant was still residing in the unit at that time and would be aware that rent was due for November. The landlord is entitled to recover rent arrears of **\$1,100.00** pursuant to section 67 of the *Act*.



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I **order** the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$325.00** 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 landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for October and November, 2010	\$1,100.00
Less security deposit and accrued interest	(-\$325.00)
Total amount due to the landlord	\$825.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 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 s. 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As the Notice was posted to the door it was deemed served on November 03, 2010 therefore the effective date of the Notice is amended to November 13, 2010 pursuant to section 53 of the *Act* and I 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 **\$825.00**. The order must be served on the tenant 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 landlord effective **two days** after service on the tenant. This order must be served on the tenant 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 09, 2010.

Dispute Resolution Officer