



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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. The landlord withdrew her application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement.

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 19, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on November 24, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The female landlord appeared, gave affirmed testimony, were provided the opportunity to present her 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?



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Background and Evidence

This tenancy started on June 01, 2009. This is a month to month tenancy. The rent started at \$1,200.00 but was reduced by the landlord to \$1,050.00 on June 01, 2010. Rent is due on the 1st of each month. The tenant paid a security deposit of \$600.00 and a pet deposit of \$600.00 on May 28, 2009.

The landlord testifies that the tenant owes a balance of rent from March, 2010 of \$400.00 and her rent cheque for November, 2010 of \$1,050.00 was cancelled by the tenant. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on November 08, 2010. This was posted on the door of the tenants unit and is deemed to have been served on November 11, 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 10 days later. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant paid \$900.00 rent for December 2010 leaving a balance owed of \$150.00.

The landlords seek an Order of Possession to take effect as soon as possible. The landlords seek to keep the tenants security deposit in partial payment towards the rent arrears and recover their 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 March, 2010 of \$400.00, November, 2010 of \$1,050.00 and December, 2010 of \$150.00. The landlords are entitled to recover a total sum of **\$1,600.00** pursuant to section 67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit and pet deposit of **\$1,200.00** in partial payment of the rent arrears.



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

Outstanding rent for March, November and December, 2010	\$1,600.00
Less security and pet deposits	(-\$1,200.00)
Total amount due to the landlord	\$450.00

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 11, 2010 therefore the effective date of the Notice is November 21, 2010 pursuant to section 53 of the *Act*. As the tenant has failed to move out by this date I grant the landlords 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 **\$450.00**. The order must be served on the tenant 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 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*.



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Dated: December 09, 2010.

Dispute Resolution Officer