



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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 and a monetary order due to unpaid rent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties and dated August 23, 2011 for a 1 year fixed term tenancy beginning on September 1, 2010 for the monthly rent of 1,300.00 due on the 1st of each month and a security deposit of \$650.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on December 2, 2010 with an effective vacancy date of December 12, 2010 due to \$2,750.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months of November and December 2010 and January 2011 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on December 2, 2010 at 3:00 p.m.

The tenant testified that they felt the rent should have been reduced because of a number of problems with the rental unit and that her boyfriend had been in communication with the landlord to request repairs but that the landlord had failed to act on these complaints.

The tenant could not provide any testimony as to why they stopped paying the rent entirely or why they did not file an application to dispute the 10 Day Notice to End Tenancy when it was issued.



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The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on December 5, 2010 and the effective date of the notice is amended to December 15, 2010, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenants**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,025.00** comprised of \$3,975.00 rent owed and late fees and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$650.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,375.00**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: January 04, 2011.

Residential Tenancy Branch