

## **DECISION**

**Dispute Codes:** OPR, MNR, MNSD, MNDC, FF

### **Introduction**

This hearing dealt with an application by the Landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for a monetary order for unpaid rent and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim. The tenant applied to cancel the notice to end tenancy. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord entitled to an order of possession? Is the landlord entitled to a monetary order to recover unpaid rent and the filing fee and to retain the security deposit?

### **Background and Evidence**

The tenancy started on May 04, 2010. The monthly rent is \$620.00 due in advance on the first of each month. On December 16, 2010, the landlord served the tenant with a notice to end tenancy. The landlord stated that the tenant owed rent for the months of December 2009 and January 2011.

The tenant stated that he gave the landlord a cheque for rent for December, but she did not accept it as she wanted the tenancy to end. The landlord stated that the tenant's cheque for November was returned for lack of funds and therefore she returned his rent cheque for December. The tenant agreed that he owed rent for two months, was late paying rent a few times but was willing to pay if the landlord would accept the money.

### **Analysis**

Based on the sworn testimony of the both parties, I find that the tenant received the notice to end tenancy, on December 16, 2010 and gave the landlord a rent cheque. Since there may have been a miscommunication between the parties due to the language barrier, I find that the tenant was willing to pay rent, but the landlord did not want to accept a cheque. Therefore the notice to end tenancy is set aside and the tenancy will continue.

The tenant would be wise to make sure that rent is paid when it is due. I find it timely to put the tenants on notice that, if he failed to pay rent again in the future and another notice to end tenancy issued, the record of these events would form part of the landlord's case should it again come before a dispute resolution officer, for consideration.

I also find that the landlord is entitled to \$1,240.00 for unpaid rent and \$50.00 for the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of 1,290.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

The notice to end tenancy is set aside and I grant the landlord a monetary order for **\$1,290.00**. Since the tenancy is continuing, the landlord's application to retain the security deposit is dismissed with leave to reapply.

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 17, 2011.

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Residential Tenancy Branch