



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agents. The tenants did not attend.

The agents testified the male tenant was served with notice of this hearing in person on December 22, 2010 at 12:35 p.m. I accept that the tenants were served in accordance with Section 89 of the *Residential Tenancy Act (Act)* and were sufficiently served for the purposes of this hearing.

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 *Act*.

Background and Evidence

The landlord testified the tenancy began on October 1, 2009 for the monthly rent of \$950.00 due on the 1st of each month.

The landlord submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on December 1, 2010 with an effective vacancy date of December 16, 2010 due to \$600.00 in unpaid rent.

Testimony 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 was served a 10 Day Notice to End Tenancy for Unpaid Rent personally on December 6, 2010 at 2:00 p.m. and that this service was witnessed by a third party.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord testified the tenants did not pay the

rent within 5 days of receipt of the notice but did pay \$200.00 on December 23, 2010. The tenants did not apply to dispute the Notice to End Tenancy within five days.

The landlord is seeking compensation for utilities that are unpaid by the tenant and has submitted two gas utility bills for the periods October 29, 2010 to November 18, 2010 and November 19, 2010 and December 17, 2010.

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 6, 2010 and the effective date of the notice is December 16, 2010. 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.

As to the landlord's claim for utilities, the landlord has failed to provide evidence of the tenant's obligations to pay utilities including a copy of a tenancy agreement and/or a demand letter giving the tenants 30 days to pay the utility amounts.

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 **\$750.00** comprised of \$700.00 rent owed and the \$50.00 fee paid by the landlord for this application.

As the landlord did provide testimony or evidence confirming the amount of the security deposit I dismiss the portion of the landlord's application to retain the security deposit and interest held. I therefore grant a monetary order in the amount of **\$750.00**. 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 17, 2011.

Residential Tenancy Branch