



Dispute Resolution Services

Page: 1

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. .

The hearing was conducted via teleconference and was attended by the landlord's agent only. The tenant did not attend.

The landlord testified that he served the tenant with notice of this hearing on December 24, 2010 in person. Based on this testimony I accept that the tenant was served in accordance with the *Residential Tenancy Act (Act)* and sufficiently served the tenant for 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 tenant 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 submitted the following evidentiary material:

- A copy of a portion of residential tenancy agreement which was signed by the parties on July 30, 2009 for a 1 year fixed term tenancy beginning on August 1, 2009 that converted to a month to month tenancy on August 1, 2010 for the monthly rent of \$975.00 due on the 1st of each month and a security deposit of \$487.50 was paid. The portion of the agreement submitted does not indicate the parties agreed to the charging of fees for late payment of rent;
- A copy of a Notice of Rent Increase with an effective date of August 1, 2010 for rent in the amount of \$1,006.00 and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on December 9, 2010 with an effective vacancy date of December 19, 2010 due to \$1,006.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of December 2010 and January 2011 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on December 9, 2010 at 9:30 a.m. and that this service was witnessed by a third party.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord confirmed that the tenant provided a payment of \$300.00 on December 22, 2010 but no further payments have been made. The tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on December 12, 2010 and the effective date of the notice is amended to December 22, 2010, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenant 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 tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Despite the landlord's claim for unpaid rent and late payment fees, as the tenancy agreement provided does not indicate any late payment fees will be charged I find the landlord is entitled only to unpaid rent amounts.

Conclusion

I find that the landlord is entitled to an Order of Possession 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.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,762.00** comprised of \$1,712.00 rent owed 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 \$487.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,274.50**. This order must be served on the tenant 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 18, 2011.

Residential Tenancy Branch