



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent, and an Order to keep all or part of the security deposit.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on December 13, 2010. Mail receipt numbers were provided by the landlords' agent in evidence. The tenants were deemed to be served the hearing documents on December 18, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent
- Is the landlord entitled to keep the security deposit?



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Background and Evidence

This tenancy started on November 16, 2008. This started as a fixed term tenancy and has since reverted to a month to month tenancy. Rent for this unit is \$3,000.00 per month and is due on the first of each month. The tenants paid a security deposit of \$2,000.00 on November 16, 2008.

The landlords' agent testifies that the tenants did not pay all the rent for November, 2010. There was an outstanding balance of \$1,000.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on November 20, 2010. This was posted to the tenant's door on that date and was deemed to have been served three days after posting. This Notice states that the tenants owe rent for November, 2010 of \$1,000.00. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 01, 2010. The tenants did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenants did not pay rent for December, 2010 on the day it was due. However, the tenants did make a rent payment of \$3,500.00 on December 21, 2010 which was accepted for use and occupancy only.

The landlords' agent has requested an amendment to the landlords' application as the tenants have failed to pay rent for January, 2011 to a sum of \$3,000.00. The total amount of unpaid rent is now \$3,500.00.

The landlord has applied to retain the tenants' security deposit of \$2,000.00 and accrued interest of \$3.77 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I find that the landlords are entitled to recover rent arrears for December, 2010 of **\$500.00** pursuant to s. 67 of the *Act*. I also find as the tenants have continued to reside at the rental unit that the landlord is entitled to amend her



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application to recover unpaid rent for January, 2011 of \$3,000.00 as the tenants would be aware that rent was due and payable on January 01, 2011. Consequently the landlord is also entitled to recover unpaid rent of **\$3,000.00** for January, 2011 pursuant to section 67 of the *Act*.

I order the landlords pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit and accrued interest of **\$2,003.77** in partial payment of the rent arrears.

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

Outstanding rent for December, 2010 and January, 2011	\$3,500.00
Total amount due to the landlords	\$1,496.23

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenant's door it was deemed served three days after posting and therefore the amended date of the notice would be December 03, 2010 pursuant to s. 53 of the *Act*. The tenants 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 tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the amended effective date of the Notice and grant the landlord an order of possession pursuant to section 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords decision will be accompanied by a Monetary Order for **\$1,496.23**. The order must be served on the Respondents and is enforceable through the Provincial Court as an order of that Court.



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I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenants. This order must be served on the Respondents 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*.

Dated: January 06, 2011.

Residential Tenancy Branch