



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the landlord for an Order of Possession for unpaid rent, for a Monetary Order to recover unpaid rent and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to tenant on December 20, 2010. The tenant is deemed to have received the hearing documents on December 25, 2010 the fifth day after they were mailed in accordance with section 90(a) of the *Act*.

The landlords' agent appeared, gave affirmed testimony, were provided the opportunity to present her evidence and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

Issue(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?

Background and Evidence

The landlords' documentary evidence shows that this month to month tenancy started on November 01, 2009. The tenant had a subsidized rent for this unit but failed to complete the declaration of income and assets form in September, 2010; consequently, the tenants rent increased to \$1,682.00 on December 01, 2010. Rent is due on the first day of each month.



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The landlords' agent states the tenant did not pay her rent for December, 2010. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on December 06, 2010. This was posted to the tenants' door and was deemed to have been served three days later. This Notice states that the tenant owes rent for December, 2010 of \$1,682.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 19, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days.

The landlord seeks to recover the sum of \$1,682.00 in unpaid rent, and the \$50.00 filing fee paid for this application. The landlord also seeks an Order of Possession to take effect as soon as possible.

Analysis

Section 26 of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement*. I find the tenant has failed to pay rent for December, 2010 and consequently, the landlord is entitled to recover rent arrears of **\$1,682.00** pursuant to s. 67 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was left on the tenants door it was deemed served on December 09, 2010. The tenant 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 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 and grant the landlord an order of possession pursuant to section 55 of the *Act*.

As the landlord has been successful with this claim I find they are entitled to recover the **\$50.00** filing fee from the tenant pursuant to section 72(1) of the *Act*.



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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 **\$1,732.00** comprised of unpaid rent of \$1,682.00 and \$50.00 filing fee. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent 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 12, 2011.

Residential Tenancy Branch