



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, 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, an Order to keep the tenants security deposit 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 17, 2010. The tenant is deemed to have received the hearing documents on December 22, 2010 the fifth day after they were mailed in accordance with section 90(a) of the *Act*.

The landlords' agents and the tenant appeared, gave affirmed testimony, were provided the opportunity to present their evidence and make submissions to me. On the basis of the solemnly affirmed 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?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on April 10, 2010. This is a fixed term tenancy which is due to expire on April 30, 2011. Rent for this unit is \$820.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$410.00 on April 08, 2010.

The landlord testifies that the tenant did not pay rent for December, 2010. The tenant's rent cheque was returned as there were insufficient funds available (NSF). The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on December 03 2010. This was posted to the tenants' door. This Notice states that the tenant owes rent for December, 2010 of \$834.40 which consists of \$820.00 rent and \$25.00 NSF fees the tenant also had a credit of \$10.59. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on December 13, 2010. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid rent for January 2011 on the day it was due as this rent cheque was also returned by the bank as NSF. The landlord seeks to amend the application to include unpaid rent for January, 2011 and NSF fees of \$25.00 to the sum of \$845.00.

The landlord seeks to recover his \$50.00 filing fee paid for this application. The landlord also seeks an Order of Possession to take effect as soon as possible and an Order to keep the security deposit of \$410.00.

The tenant does not dispute that he owes rent to the landlord for December, 2010 and January, 2011. The tenant states he initially withheld his rent as he did not know if he was going to continue to live at the rental unit due to an issue with bedbugs, rodents and a blocked sink which the landlord had failed to deal with. The tenant states as he was out of the province on January 01, 2011 he did not pay his rent for January.

Analysis

Section 26 of the *Act* states: *a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.* Both parties agree that rent is due on the first day of each month and the tenant agrees that he has not paid rent for December, 2010 or January, 2011. Consequently, I find that the landlord is entitled to recover rent arrears of **\$809.41** pursuant to s. 67 of the *Act*. I also find the landlord may amend his application to include unpaid rent for January, 2011 as the tenant continues to

reside in the unit and would have been aware that rent was due on this date. Therefore, the landlord is also entitled to recover the sum of **\$820.00** pursuant to s. 67 of the *Act*.

The landlord also seeks to recover \$50.00 in bank fees for the returned cheques for December, 2010 and January, 2011. As the tenant was aware that the landlord would make these charges in the event any rent cheques were returned by the bank, I find the landlord is entitled to recover the sum of **\$50.00** from the tenant 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 posted to the tenants' door it was deemed served three days later and therefore the amended date of the Notice would be December 16, 2010 pursuant to s. 53 of the *Act*. 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 amended effective date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

As the landlord has been largely successful with his claim I find he is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Unpaid rent December, 2010 and January, 2011	\$1,629.41
Subtotal	\$1679.41
Plus filing fee	\$50.00
Less security deposit	(-\$ 410.00)
Total amount due to the landlord	\$1,269.41

Conclusion



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I HEREBY FIND in favor of the landlords monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,269.41**. 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 13, 2011.

Residential Tenancy Branch