



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 landlord testified that the landlord served the tenants with the notice of this hearing via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on this testimony, I find that the tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

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 *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the parties on March 3, 2010 for a 1 year fixed term tenancy beginning on March 1, 2010 with a security deposit of \$375.000 paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on December 14, 2010 with an effective vacancy date of December 24, 2010 due to \$825.00 in unpaid rent.

The landlord provided testimony that they took over management of this residential property two months ago and that both respondents were tenants of this rental unit at the start of their management.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months of December 2010 and January and February 2011 and

that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on December 14, 2010.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

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 17, 2010 and the effective date of the notice is amended to December 27, 2010, pursuant to Section 53 of the *Act*. 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 or any subsequent rent due since that time.

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.

While the tenancy agreement does not stipulate the rental amount I find that, based on the amount of the security deposit paid, rent is \$750.00 per month and based on the landlord's testimony I accept that rent is due on the 1st of the month.

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 **\$2,300.00** comprised of \$2,250.00 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 \$375.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,925.00**. 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: February 02, 2011.

Residential Tenancy Branch