



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, 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 hand delivered to the tenant on January 28, 2011.

Both parties 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:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order to recover the unpaid rent?

Background and Evidence

Both parties agree that this tenancy started on March 01, 2009. This is a month to month tenancy and rent is \$361.00 per month due on the 1st of each month.

The landlord testifies that the tenant did not pay the balance of rent owed for December, 2010 of \$51.00 and did not pay rent for January, 2011 of \$361.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on January 11, 2011. This was posted on the door of the tenants unit and is deemed to have been served on January 14, 2011 the third day after posting. The tenant had five days to either pay the outstanding rent or apply for Dispute

Resolution or the tenancy would end on January 24, 2011. The tenant did not pay the outstanding rent or dispute the Notice within five days. The landlord seeks an Order of Possession to take effect as soon as possible and a Monetary Order to recover the unpaid rent of \$361.00 for January and \$51.00 for December, 2010 plus the filing fee of \$50.00.

The tenant does not dispute that he owes rent and states when the landlord served him with the Notice of the hearing he tried to pay the rent but the landlord refused to take it.

The landlords' agent testifies that the tenant only advised them that he had some of the outstanding rent but as he had not paid it within the five days allowed after receiving the 10 day Notice they declined to accept it at that time and the tenant closed his door on them.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* says that a tenant must pay rent on the day it is due under the terms of the tenancy agreement. As the tenant does not dispute the fact that he owes rent and despite any attempts on his part to pay his rent on January 28, 2011 after the five allowable days as stated on the 10 Day Notice; I find that the landlord is entitled to recover rent arrears for December, 2010 of \$51.00 and for January 2011 of 361.00 Consequently, the landlord is entitled to a Monetary Order of **\$412.00** pursuant to section 67 of the *Act*. On the landlords application she only applied for the sum of \$361.00 as she did not add in the outstanding sum of December, 2010 of \$51.00. Therefore I have allowed an amendment to the landlords claim to allow her to recover all of the outstanding rent.

As the landlord has been successful in this matter, she is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

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

Outstanding rent	\$412.00
Total amount due to the landlord	\$462.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay

the rent or apply for Dispute Resolution or the tenancy would end. 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 s. 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As the Notice was posted to the door it was deemed served on January 14, 2011 and I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$462.00**. The order must be served on the tenant 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 tenant 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: February 10, 2011.

Residential Tenancy Branch