



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession and to recover the filing fee.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on February 8, 2011, the Tenant did not appear. The Landlord provided the tracking number and stated that her research of the online site revealed the Tenant had claimed the registered mail. I find the Landlord has met the criteria for service of the hearing documents and the conference proceeded in the Tenant's absence.

The Landlord appeared, gave affirmed testimony and was provided the opportunity to present her evidence orally and in written and documentary form, and make submissions to me.

The Landlord requested to amend her Application to include a request the amount of unpaid rent for February and to retain the security deposit. As a result, I amend the Landlord's Application to include the matters related to unpaid rent and to retain the security deposit.

Issue(s) to be Decided

Has the Tenant breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

This tenancy started on April 21, 2010, monthly rent was \$500.00 and a security deposit of \$242.50 was paid at the beginning of the tenancy. The Landlord indicated she believes the rental unit is now vacant, but due to the uncertainty, is still in need of an order of possession.

Based on the affirmed testimony of the Landlord, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on February 2, 2011, in person. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant did not apply to dispute the Notice. The Landlord provided evidence and gave affirmed testimony that the Tenant had not paid the rent due for February 2011 and owes the amount of \$500.00.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **2 days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I allow the Landlord to amend their Application to include a claim to retain the security deposit in partial satisfaction of the claim.

I find that the Landlord has established a total monetary claim of **\$550.00** comprised of **\$550.00** in unpaid rent and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$242.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$307.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit in partial satisfaction of the claim and is granted a monetary order for the balance due.

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 28, 2011.

Residential Tenancy Branch