



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 hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a Monetary Order to recover unpaid rent, an Order to keep all or part of the security deposit and to recover the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with s. 89 of the *Act*, sent via registered mail on February 11, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on February 16, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

All of the testimony and documentary evidence was carefully considered. 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?
- Is the landlord entitled to keep all or part of the security deposit and interest?

Background and Evidence

This tenancy started on September 01, 2010. This is fixed term tenancy which was due to expire on March 31, 2011. Rent is \$825.00.00 per month with a \$68.00 rent incentive for the term of the lease, making the rent \$757.00 per month. Rent is due on the 1st of each month. The tenant paid a security deposit of \$412.50 and a pet deposit of \$200.00 on August 27, 2010.

The landlords' agent testifies that the tenant did not pay the balance of rent owed for November, 2010 of \$25.00. The tenant did not pay rent for December, 2010 and January, 2011. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 07, 2011. This was posted on the door of the tenants unit and is deemed to have been served on January 10, 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 17, 2011. 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 February, 2011. The total amount of unpaid rent is now \$2,296.00.

The landlord seeks a Monetary Order to recover the unpaid rent and an Order of Possession to take effect as soon as possible.

The landlord seeks to keep the tenants security deposit of \$412.50 and pet deposit of \$200.00 in partial payment towards the rent arrears and recover the \$50.00 filing fee paid for this proceeding.

Analysis

The tenant did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

The terms of the tenancy agreement provided by the landlord states that rent is due and payable by the 1st day of each month. The *Residential Tenancy Act (Act)* s. 26 states a tenant must pay rent on the day it is due. Consequently, I find the landlord is entitled to recover rent

arrears for November and December, 2010 and January and February, 2011 of \$2,296.00 pursuant to section 67 of the *Act*.

I order the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenants' security deposit of **\$412.50 and pet deposit of \$200.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, they are 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	\$2,296.00
Less security and pet deposits	(-\$612.50)
Total amount due to the landlord	\$1,733.50

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 10, 2011 therefore the effective date of the Notice is amended to January 20, 2011 pursuant to section 53 of the *Act* 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 **\$1,733.50**. 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 25, 2011.

Residential Tenancy Branch