



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 04, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on February 09, 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

The landlords' agent was unsure when this tenancy started as her management company took over management of the property when the building was purchased by new landlords a few years ago. She believes that this tenancy does not have a written tenancy agreement in place for the previous landlords but thinks this tenancy started approximately five years ago. This is a month to month tenancy and rent is \$700.00 per month due on the 1st of each month. The landlords' is unsure how much security deposit is held for the tenant as no records have been passed over when the property was purchased.

The landlord testifies that the tenant did not pay the balance of rent owed for October, 2010 of \$20.00, for November, 2010 of \$100.00, for December, 2010 of \$100.00, for January, 2011 of \$100.00. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on January 19, 2011. This was posted on the door of the tenants unit. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on January 31, 2011. The tenant did not pay the outstanding rent or dispute the Notice within five days. Since that time the tenant has not paid the balance of rent owed for February, 2011 of \$100.00. The total amount of outstanding rent is now \$420.00.

The landlord seeks to keep the tenants security deposit in partial payment towards the rent arrears and recover the filing fee of \$50.00. The landlord also seeks an Order of Possession to take effect as soon as possible.

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 of the landlords agent. 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 22, 2011 therefore the effective date of the Notice is amended to February 01, 2011 pursuant to section 53 of the *Act* and I grant the landlord an order of possession pursuant to s. 55 of the *Act*.

With regards to the landlords monetary claim; I refer both Parties to Section 26 of the *Act* which 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.* Therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears of **\$420.00** pursuant to section 67 of the *Act*.

The landlord has applied to keep the security deposit against unpaid rent however the landlord has no records to show how much security deposit is held for the tenant. Without evidence to show what security deposit was paid by the tenant I cannot make an Order for the landlord to keep it to offset against unpaid rent. Therefore, this section of the landlords claim is dismissed with leave to reapply.

As the landlord has been largely 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	\$420.00
Total amount due to the landlord	\$470.00

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 **\$470.00**. 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 28, 2011.

Residential Tenancy Branch