



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes – OPR, MNR, MNDC, 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 hearing was conducted via teleconference and was attended by the landlord. The tenants did not attend.

The landlord submitted confirmation the landlord served the tenants with the notice of this hearing via registered mail. Section 90 of the *Residential Tenancy Act (Act)* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the submissions of the landlord, 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; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

Background and Evidence

The landlord testified the tenancy began on January 1, 2011 as a month to month tenancy for the monthly rent of \$1,400.00 due on the 1st of each month and a security deposit of \$700.00 was requested.

The landlord also testified that the tenant issued a cheque (copy submitted into evidence) dated January 1, 2011 for January rent and the security deposit. She states that she later had that cheque returned from her bank as insufficient funds. The landlord testified she spoke to the tenant who indicated she would replace the cheque but has not since done so.

The landlord also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on February 8, 2011 with an effective vacancy date of February 18, 2011 due to \$1,400.00 in unpaid rent.

Testimony provided by the landlord indicates that the tenants failed to pay the full rent owed for the months of January, February and March 2011 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when sent via registered mail on February 23, 2011.

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 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 February 28, 2011 and the effective date of the notice is amended to March 10, 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*.

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.

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 and grant a monetary order in the amount of **\$4,250.00** comprised of \$4,200.00 rent owed and the \$50.00 fee paid by the landlord for this application.

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: March 31, 2011.

Residential Tenancy Branch