

## **DECISION**

Dispute Codes      OPR, MNSD, MNDC, MND, FF, OPB

### Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. The landlord presented evidence that the tenants were served with the application for dispute resolution and notice of hearing by registered mail on February 23, 2011. I found that the tenants had been properly served with notice of the landlord's claim and the date and time of the hearing. At the outset of the hearing the tenant advised that he had vacated the premises on January 30, 2011. The landlord confirmed this and withdrew his application for an Order of Possession.

### Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent, and loss of income?

### Background and Evidence

The tenancy began on or about November 10, 2009. Rent in the amount of \$691.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$337.50. The tenant failed to pay rent in the month January 2011, and on January 3, 2011 the landlord served the tenant with a notice to end tenancy. The landlord is also seeking compensation for cleaning costs and loss of income for the month of February.

### Analysis

I accept the landlord's testimony and I find that the tenant was served with a notice to end tenancy for non-payment of rent. The tenant did not pay the outstanding rent within 5 days of receiving the notice and did not apply for dispute resolution to dispute the

notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. The landlord advised that the tenant subsequently paid 675.00 on January 9, 2011. This was done outside of the five day allowable time limit. There was no clear indication from either the tenant or the landlord on whether this payment was for use and occupancy or if it re-instated the tenancy. The burden of proof is up to the applicant, in this case the landlord. As such, I deem the Notice to End Tenancy valid and must base my decision on the documentary evidence before me. I deem the Tenancy to have ended in January and the landlord is not entitled to loss of revenue for February. I also find the landlord did incur costs of cleaning the rental unit and is entitled to \$540.00 to cover those costs and the \$16.00 the landlord was owed for outstanding January 2011 rent. The landlord also submitted several quotes of work that he intends on doing, however, he is premature in submitting those for compensation and I dismiss that portion of his claim and grant him leave to reapply.

As for the monetary order, I find that the landlord has established a claim for \$ 556.00 in unpaid rent and cleaning costs. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$337.50 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$268.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

### Conclusion

The landlord is a monetary order for \$268.50. The landlord may retain the security deposit.

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 07, 2011.

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Residential Tenancy Branch