



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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. The landlord withdrew their application for a Monetary Order for money owed or compensation for damage or loss. This hearing was originally scheduled to take place at the beginning of March, 2011 however as the landlords evidence had not been received by the Dispute Resolution Officer before the hearing; the hearing was reconvened to be heard today.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with s. 89 of the *Act*, sent via registered mail on February 16, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on February 21, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords' agent and one of the landlords appeared at the reconvened hearing. The landlords agent gave affirmed testimony, was provided the opportunity to present the evidence orally, in writing, and in documentary form. There was no appearance for the tenants, 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?

Background and Evidence

This tenancy started on June 01, 2010. This is a month to month tenancy and rent is \$1,000.00 per month due on the 1st of each month. The tenants paid a security deposit of \$500.00 on June 01, 2010.

The landlords' agent testifies that the tenants did not pay the rent owed for January, 2011 of \$1,000.00. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on January 20, 2011. This was posted on the door of the tenants unit. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on January 30, 2011. The landlords' agent states an error was made on the amount of rent outstanding on the 10 Day Notice. The landlord had put the sum of \$1,500.00 as owed when it was in fact \$1,000.00. The tenants 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. As the hearing was reconvened and the tenants have remained in the rental unit without paying rent for March, 2011 the landlords' agent has requested to amend the application to include rent arrears for March, 2011 to the sum of \$1,000.00. The total amount of outstanding rent is now \$3,000.00.

The landlord seeks an Order of Possession to take effect as soon as possible.

The landlord seeks to keep the tenants security deposit of \$500.00 in partial payment towards the rent arrears and recover his filing fee.

Analysis

The tenants did not appear at the hearing, despite having been sent a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I find that the landlord is entitled to recover rent arrears for January and February, 2011 of \$2,000.00 and I have allowed the landlords amended application to recover rent arrears for March, 2011 of \$1,000.00 as the

tenants are still residing in the unit and would be aware that rent was due for March. Therefore the landlord is entitled to recover rent arrears of **\$3,000.00** 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 **\$500.00** in partial payment of the rent arrears.

As the landlord has been successful in this matter, he 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 for January, February, March, 2011	\$3,000.00
Less security deposit	(-\$500.00)
Total amount due to the landlord	\$2,550.00

I accept that the tenants were 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 tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants 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 tenants are 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 23, 2011 therefore the effective date of the Notice is amended to February 02, 2011 pursuant to section 53 of the *Act* and I grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,550.00**. The order must be served on the tenants 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 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.

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 15, 2011.

Residential Tenancy Branch