



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, a Monetary Order to keep all or part of the security deposit and to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*. They were given to the tenants in person on February 23, 2011. The tenant attending confirmed they had received the hearing documents.

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing, a decision has been reached:

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

Both parties agree that the tenancy started on August 01, 2004. This is a month to month tenancy and rent is \$425.00 per month and is due on the first of each month. The tenants paid a security deposit of \$300.00 on July 12, 2004.

The landlords' agent testifies that the tenants did not pay rent when it was due on January 01 and February 01, 2011. On February 08, 2011 the landlord served the tenants in person with a 10 Day Notice to End Tenancy for unpaid rent. The amount owing at this time was \$850.00. Since that time the tenants have not paid rent for March, 2011 and the landlord seeks to amend his application to include rent for March of \$425.00. This brings the total amount of the landlords claim for unpaid rent to \$1,275.00. The landlord seeks an Order of Possession for March 31, 2011.

The tenant attending does not dispute that they owe rent for January, February and March, 2011. The tenant states she now has all the rent money owed and will pay the landlord this sum today if the landlord does not enforce the Order of Possession.

The landlords agent testifies that if the tenant pays the rent arrears in full today he will not enforce any Orders given to him and will reinstate the tenancy.

Analysis

There is no dispute about the amount of outstanding rent by the tenants. Consequently, I find the landlord is entitled to recover rent arrears for January and February, 2011. I further find the landlord may amend his application to include unpaid rent for March, 2011 as the tenants have continued to reside at the rental unit and would be aware that rent was due for March also. Consequently the landlord will receive a Monetary Order for unpaid rent of **\$1,275.00** pursuant to s. 67 of the *Act*.

I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's security deposit of \$300.00 and accrued interest of \$10.62 in partial payment of the rent arrears.

As the landlord has been successful in this matter I find the landlord may recover the **\$50.00** filing fee paid for this application from the tenants pursuant to s.72(1) of the *Act*. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for three months	\$1,275.00
Less security deposit and accrued interest	(-\$310.62)
Total amount due to the landlord	\$1,014.38

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 88 of the *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 date of the Notice and grant the landlord an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,014.38**. 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 on **March 31, 2011**. 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 16, 2011.

Residential Tenancy Branch