



Dispute Resolution Services

Page: 1

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 sent to the tenant by registered mail on March 03, 2011. The tenant confirmed he 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 November 01, 2003. This is now a month to month tenancy and rent is \$2,230.00 per month and is due on the first of each month. The tenants paid a security deposit of \$990.00 on November 17, 2003.

The landlords' agent testifies that the tenant did not pay the balance of rent for December, 2010 of \$1,496.00 and failed to pay rent when it was due on January 01, February 01, and March 01, 2011. On February 18, 2011 the landlord served the tenants with a 10 Day Notice to End Tenancy for unpaid rent by posting it in his mail slot. This Notice states the tenant has five days to pay the outstanding rent or dispute the notice or the tenancy will end on February 28, 2011. The total amount of unpaid rent is \$8,186.00. The landlord seeks an Order of Possession for April 01, 2011. The landlords agent testifies that if the tenant pays the rent arrears in full by March 31, 2011 he will not enforce either the Order of Possession or the monetary Order given to him and will reinstate the tenancy as of that date.

The landlord seeks to recover late fees from the tenant of \$25.00 for each of the four months that rent is unpaid to a total sum of \$100.00.

The tenant does not dispute that he owes rent for December, January, February and March, 2011. The tenant also does not dispute the late fees charged by the landlord of \$100.00. The tenant states he will get the outstanding rent to the landlord by March 31, 2011 and understands that if he does not pay it by this date the landlord will enforce the Orders given to him today.

Analysis

There is no dispute about the amount of outstanding rent and late fees by the tenant. Consequently, I find the landlord is entitled to recover rent arrears of \$8,186.00 and late fees of \$100.00. A Monetary Order for \$8,286.00 has been issued 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 \$990.00.00 and accrued interest of \$35.04 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 tenant pursuant to s.72(1) of the *Act*. The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent and late fees for four months	\$8,286.00
Less security deposit and accrued interest	(-\$1,025.04)

Total amount due to the landlord	\$7,360.96
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I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to s. 88 of the *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 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 tenant is 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 **\$7,360.96**. 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 on **April 01, 2011**. 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: March 18, 2011.

Residential Tenancy Branch