



Dispute Resolution Services

Page: 1

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 to obtain an Order of Possession, a Monetary Order for unpaid rent, a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement and to recover the cost of the filing fee.

Service of the hearing documents, by the landlords to the tenant, was done in accordance with section 89 of the *Act*; they were sent to the tenant by registered mail on March 21, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on March 26, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order to recover late fees?

Background and Evidence

This tenancy started on January 01, 2008. This started as a fixed term tenancy and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is now \$858.00 per month and is due on the first of each month. The landlord has provided copies of the tenancy agreement, rent increase notices, the rent ledger and the 10 Day Notice to End Tenancy.

The landlord testifies that the tenant owed a balance of rent for March, 2011 of \$934.00 which included an outstanding amount of \$76.00 from February, 2011. The landlord testifies that the tenant failed to pay the outstanding rent on March 01, 2011 and issued a 10 Day Notice to End the Tenancy for unpaid rent on March 02, 2011. This was posted to the tenants' door and was deemed to have been served three days after posting. This Notice states the tenant has five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on March 12, 2011.

The tenant did not pay all the outstanding rent or dispute the Notice within five days. The tenant paid \$50.00 on March 03, 2011; \$300.00 on March 08, 2011 and \$400.00 on March 28, 2011. These payments were accepted for use and occupancy only and the landlord states this was written on the tenants' receipts. A late fee was applied to the tenants account for March, 2011 of \$20.00. The tenant did not pay rent for April, 2011 on the day it was due but did pay \$254.00 on April 02 and \$400.00 on April 06, 2011. These payments were also accepted for use and occupancy only. A late fee of \$20.00 was applied to the tenants account for April, 2011. The total amount of unpaid rent is now \$388.00 and the total of unpaid late fees are now \$40.00.

The landlord had applied for unpaid rent for May, 2011 However as the hearing was held in April this claim for unpaid rent for May, 2011 is premature and will not be considered at this hearing.

The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlords are entitled to

recover rent arrears for of **\$388.00** pursuant to s.67 of the *Act*. I also find the landlord is entitled to recover late fees of **\$40.00** pursuant to section 67 of the *Act*.

As the landlords have been largely successful in this matter, they are also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*. The landlords will receive a monetary order for the balance owing as follows:

Unpaid rent	\$388.00
Filing fee	\$50.00
Total amount due to the landlord	\$478.00

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was posted on the tenants' door it was deemed served three days after posting and therefore the amended date of the notice would be March 15, 2011 pursuant to s. 53 of the *Act*. The tenant did not pay all the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days. The landlord accepted what rent the tenant did pay for use and occupancy only and in doing so did not reinstate the tenancy

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$478.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This order must be served on the Respondent 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: April 07, 2011.

Residential Tenancy Branch