



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession for unpaid rent, a Monetary Order for unpaid rent an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 31, 2012. Mail receipt numbers were provided by the landlord. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present 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*. All of the testimony and documentary evidence was carefully considered.

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 keep the security deposit?

Background and Evidence

This tenancy started on November 01, 2007. Rent for this unit is \$551.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$300.00 on October 15, 2007

The landlord testifies that the tenant failed to pay all the rent for November, 2011. A previous hearing was held and the landlord was issued with a Monetary Order and an Order of Possession. The landlord agreed at that hearing that if the tenant's social worker called him to reassure the landlord that Social Services would be paying rent for the tenant the landlord would not enforce the Orders given at that hearing. The landlord testifies that the tenant's social worker did call him and Social Services have been paying the tenants rent since that time. However the tenant's social worker informed the landlord that the tenant would be responsible for the rent arrears of \$472.00. The landlord testifies that due to this conversation the landlord re-instated the tenancy.

The landlord testifies that the tenant failed to pay this outstanding sum of \$472.00 and the landlord issued the tenant with another 10 Day Notice to End Tenancy for unpaid rent on January 31, 2012. This Notice was posted to the tenant's door and was deemed to have been served three days after posting. This Notice states that the tenant owed rent of \$472.00. The tenant had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on January 23, 2012. The tenant did not pay the outstanding rent but Social Services did pay February, 2012 rent which was accepted by the landlord for use and occupancy only.

The landlord has applied to retain the tenants' security deposit of \$300.00 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect at the end of February, 2012 and seeks to recover the \$50.00 filing fee from the tenant.

Analysis

Section 26 of the Act states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

I find the tenant failed to pay the rent arrears of \$472.00 within five days of being deemed to have received the 10 Day Notice. I also find the rent paid on behalf of the tenant for February, 2012 was accepted for use and occupancy only and did not reinstate the tenancy. Consequently, the landlord is entitled to a Monetary Order to recover the rent arrears to the total sum of **\$472.00** pursuant to s.67 of the Act.

I order the landlords pursuant to s. 38(4)(b) of the Act to keep the tenant's security deposit of **\$300 and accrued interest of 5.47** in partial payment of the rent arrears.

As the landlord has been successful in this matter, the landlord 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	\$472.00
Less Security Deposit	(-\$305.47)
Plus filing fee	\$50.00
Total amount due to the landlords	\$216.53

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. The tenant 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 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 favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$216.53**. 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 **on February 29, 2012**. 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: February 16, 2012.

Residential Tenancy Branch