Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: *OPR, MNR, MNSD, MNDC, MND, FF.*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- An order of possession pursuant to Section 55;

- A monetary order for rent owed by the tenant and money for loss under the Act, pursuant to Section 67;

- A monetary order to retain the security deposit in partial satisfaction of the claim, pursuant to Section 38;

- An order to recover the cost of filing this application, pursuant to Section 72.

The ten day notice to end tenancy dated December 07, 2008 was served on the tenant, by placing it in the tenant's mailbox, on December 07, 2008. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

- Is the notice to end tenancy valid?

- Is the landlord entitled to an order of possession for unpaid rent?

- Is the landlord entitled to a monetary order to recover unpaid rent and the filing fee and to retain the security deposit in partial satisfaction of this claim?

- Is the landlord entitled to a monetary order for damage caused to the rental unit?

Background and Evidence

Based on the sworn testimony of both parties, the facts are as follows:

The tenancy started on October 15, 2008. The monthly rent is $850.00 due in advance on the first day of the month.

On September 24, 2008, the tenant paid a security deposit of $425.00. The tenant paid partial rent for October and November 2008 and owes the landlord $725.00 for these

two months. The tenant failed to pay rent for December 2008 and was served a ten day notice to end tenancy on December 07, 2008. The tenant continues to occupy the suite and has not paid rent for January 2009.

The landlord is applying for an order of possession effective two days after service on the tenant and to recover the filing fee of $50.00. The landlord is also applying for a monetary order in the amount of $2475.00 which consists of the following:

1.	Rent for October 2008	$425.00
2.	Rent for November 2008	$300.00
3.	Rent for December 2008	$850.00
4.	Late fee for December	$25.00
5.	Rent for January 2009	850.00
6.	Late fee for January	$25.00
	Total	**$2475.00**

Analysis

The tenant received the notice to end tenancy for unpaid rent, on December 07, 2008 and did not pay rent within five days of receiving the notice to end tenancy nor did the tenant make application pursuant to Section 46 to set aside the Notice to End Tenancy and the time to do so has expired. In these situations, the *Residential Tenancy Act* provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice. Pursuant to section 55(2), I am issuing a formal order of possession effective two days after service on the tenant. This Order may be filed in the Supreme Court for enforcement.

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. I find that the landlord is entitled to a total of $2525.00. I order that the landlord retain the security deposit and accrued interest of $426.72 in partial satisfaction of the claim.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of $2098.28. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord did not submit any evidence to support the landlord's claim for compensation for loss under the Act and hence this portion of the landlord's claim is dismissed.

Conclusion

I grant the landlord an order of possession effective **two** days after service on the tenant and a monetary order in the amount of **$2098.28.**

Dated January 27, 2009.

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Dispute Resolution Officer