



Dispute Resolution Services

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

DECISION

Dispute Codes: OPR, MNR, 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 to recover unpaid rent, pursuant to Section 67;
- An order to retain the security deposit, pursuant to Section 38;
- An order to recover the cost of filing this application, pursuant to Section 72.

The notice of hearing dated December 16, 2008 was served to the tenant on December 19, 2008 in person. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was 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 landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order for unpaid rent and the filing fee?
- Is the landlord entitled to retain the security deposit in satisfaction of this claim?

Background and Evidence

The landlord testified that the tenancy began on October 15, 2005, on a month to month basis. The monthly rent is \$647.00 due in advance on the first day of the month. In December, the tenant failed to pay rent and on December 02, 2008 was served with a ten day notice to end tenancy with an effective date of December 12, 2008. The tenant paid rent for January and was issued a receipt for use and occupancy only. The landlord stated that the tenant has agreed to cover the arrears according to a payment plan drawn up by both parties.

The landlord withdrew the landlord's application for a monetary order for rent and to retain the security deposit. The landlord is requesting an order of possession effective two days after service on the tenant and has plans to enforce this order only in the event that the tenant does not fulfill the tenant's commitment with regard to the payment plan. The landlord is also requesting a monetary order to recover the filing fee.

Analysis

Based on the undisputed sworn testimony of the landlord, I accept the landlord's evidence in respect of the claim. I find that the notice to end tenancy was valid and pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date. The tenant did not pay the amount the tenant owed 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 a residential tenancy and the time to do so has expired. Pursuant to section 55(2) I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

I also find that the landlord is entitled to the recovery of the filing fee in the amount of \$50.00. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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 **\$50.00**.

Dated January 15, 2009.
