



# 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, 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, 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.

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. During the hearing the landlord requested that the application be amended to include a claim for the security deposit, as the landlord had made an error while filling out the application. The tenant agreed to allow the landlord to amend the application.

### **Issues 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 and the filing fee and to retain the security deposit in partial satisfaction of this claim?

### **Background and Evidence**

The landlord testified that the tenancy started on March 01, 2008. The monthly rent is \$1400.00 due in advance on the first day of each month. The landlord stated that the tenant has paid rent late on several occasions and has submitted into evidence, documentation to support this. A clause in the tenancy agreement provides for a late fee charge of \$25.00 and an NSF charge of \$25.00.

The tenant failed to pay rent on January 01, 2008, and was issued a ten day notice to end tenancy. The landlord stated and the tenant agreed that the tenant owed the

landlord \$250.00 in late and NSF fees for October, November, December, January and February, \$100.00 for December rent, \$1400.00 for January rent and \$1400 for February rent. The landlord is applying for an order of possession effective two days after service on the tenant and a monetary order in the amount of \$3150.00 for rent, late and NSF fees. The landlord is also applying to recover the filing fee of \$50.00 and to retain the security deposit in partial satisfaction of the landlord's claim.

### **Analysis**

The tenant received the notice to end tenancy for unpaid rent, on January 07, 2009 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 \$3200.00, which includes the filing fee of \$50.00. I order that the landlord retain the security deposit and interest of \$709.32 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2490.68. 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 **\$2490.68**

Dated February 27, 2009.

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Dispute Resolution Officer