



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 and a Monetary Order to recover the cost of the filing fee. The rest of the landlords' application for a Monetary Order for unpaid rent and to retain the security deposit has been withdrawn.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail to each tenant on July 16, 2009. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on July 21, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form.

There was no appearance for the tenants, 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

- Was there any outstanding rent owed to the landlord by the tenants at the time the 10-Day Notice was issued and served?
- Whether the landlord is entitled to an Order of Possession?
- Is the landlord entitled to recover filing fees from the tenant for the cost of the application?



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Background and Evidence

This tenancy started on March 01, 2009. This was a fixed term tenancy for three months which reverted to a month to month tenancy at the end of the term. Rent for this unit is \$900.00 per month due on the first of each month. The tenants paid a security deposit of \$450.00 on December 20, 2008.

The landlords' agent testifies that the tenants owed rent for June and July, 2009. The landlords' agent served the tenants with a 10 Day Notice to End Tenancy for unpaid rent on July 04. This was attached to the tenants' door and was deemed to have been served three days after service. The tenants paid the outstanding rent on July 15, 2009 and the landlord accepted this for 'use and occupancy only'.

The landlord has requested an Order of Possession for September 04, 2009.

Analysis

The tenants did not appear at the hearing, despite each having been sent a Notice of the hearing. I find that the landlord applied for Dispute Resolution one day early as the 10 Day Notice to End Tenancy would not have come into effect until July 17, 2009. However, as the tenants remain in the rental unit as of today's date I will allow the landlords application.

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 had until July 12, 2009 to pay the rent or apply to dispute the Notice to End Tenancy. The tenant paid the rent on July 15, 2009 and this was accepted and documented by the landlord for 'use and occupancy only' Therefore, the Notice remains in effect.



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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 to take effect on **September 04, 2009**.

As the landlord has been successful with their amended application I also find they are entitled to a Monetary Order to recover the filing fee of **\$50.00**

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 **\$50.00**. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on September 04, 2009**. This order must be served on the tenants 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: August 31, 2009.
