

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the affirmed testimony of the Agent for the Landlord and the Tenant, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on July 13, 2009, by posting the Notice on the Tenant's door. Although the Landlord did not submit a copy of the Notice to End Tenancy in evidence in this Application, the Tenant testified he had received the Notice, and had it with him at the time of the hearing.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant also testified that he agreed he is in arrears with the rent and had been for several months. He did not dispute the amount claimed by the Landlord's Agent of \$9,935.00, as the amount of rent that was due.

Therefore, I find that the Landlord has established a total monetary claim of **\$10,035.00** comprised of \$9,935.00 in rent arrears and the \$100.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit and interest of **\$616.33** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$9,418.67**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession, may keep the security deposit and interest in partial satisfaction of the claim and is granted a monetary order for the balance due.

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: September 16, 2009.

Dispute Resolution Officer