

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 and a monetary order due to unpaid rent.

The hearing was conducted via teleconference and was attended by the landlord's agent. The tenant did not attend.

The landlord's agent testified that the tenant was served with the Notice of Hearing documents via registered mail on April 16, 2010.

Based on this testimony, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on June 1, 2009 as a 1 year fixed term tenancy that converted to a month to month tenancy on June 1, 2010 for a monthly rent in the amount of \$885.44 due on the 1st of the month, a security deposit of \$397.50 was paid on May 27, 2009.

The landlord submitted the following evidentiary material:

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 10, 2010 with an effective vacancy date of March 23 due to \$860.00 in unpaid rent;
- A copy of the tenant's account ledger; and
- Copies of receipts issued to the tenant for rent payments since the notice was issued that are noted as for use and occupancy only.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of March 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on March 10, 2010.

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 did not apply to dispute the Notice to End Tenancy within five days.

The landlord's agent testified the tenant ultimately paid rent due for March 1, 2010 on April 16, 2010. The agent also noted that rent for April 2010 was paid on May 13, 2010 and that rent for May 2010 was paid on June 1, 2010 and no rent for June 2010 has been paid.

The agent has deposited the tenant's cheque issued on June 1, 2010 and is uncertain if it will be cleared or returned as insufficient funds. As a result the landlord cannot determine if rent for May 2010 has actually been paid. The agent testified the current outstanding rent is in the amount of \$810.00 (June, 2010).

Analysis

I have reviewed all evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on March 13, 2010 and the effective date of the notice is March 23, 2010. I accept the evidence before me that the tenant failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

As the landlord cannot confirm at this time whether or not the cheque received for rent for the month of May, 2010 will clear through no fault of her own, I grant the landlord leave to apply for lost rent for May, 2010 only if the noted cheque does not clear.

I further find the tenant still owes rent in the amount of \$810.00 for the month of June 2010.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$860.00** comprised of \$810.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$397.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$462.50**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: June 03, 2010.

Dispute Resolution Officer