



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, a Monetary Order for unpaid rent, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

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 on September 17, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on September 22, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord 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

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the security deposit?



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Background and Evidence

The landlord testifies that this month to month tenancy started on October 01, 2008. Rent for this unit is \$1,100.00 per month and is due on the first of each month. The tenants paid a security deposit of \$525.00 on October 12, 2007.

The landlords' agent testifies that the tenants did not pay rent for August, 2010 of \$1,100.00 on the day it was due. The landlord issued a 10 Day Notice to End the Tenancy for unpaid rent on August 02, 2010. This was posted to the tenant's door and was deemed to have been served three days after posting. The tenants had five days to either pay the outstanding rent, apply for Dispute Resolution or the tenancy would end on August 15, 2010. The tenants did not pay the outstanding rent or dispute the Notice within five days. The tenants did pay \$600.00 on August 12 and \$400.00 on August 25, 2010 which left a balance of rent owing for August, 2010 of \$100.00. Since that time the tenants have not paid rent for September or October, 2010 to the sum of \$2,200.00. The total amount of unpaid rent is now \$2,300.00.

The landlord has applied to retain the tenant's security deposit of \$525.00 and accrued interest of \$9.65 in partial payment towards the rent arrears. The landlord has also applied for an Order of Possession to take effect as soon as possible.

Analysis

The tenants did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I find that the landlord is entitled to recover rent arrears for August, September and October, 2010 of **\$2,300.00** pursuant to s.67 of the *Act*.



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I order the landlord pursuant to s. 38(4) of the *Act* to keep the tenant's security deposit and accrued interest of \$534.65 in partial payment of the rent arrears.

As the landlord has been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for August, September and October, 2010	\$2,300.00
Filing fee	\$50.00
Total amount due to the landlord	\$1,815.35

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 did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

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 pursuant to section 55 of the *Act*.

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 **\$1,815.35**. The order must be



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served on the respondents 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 **two days** after service on the tenants. This order must be served on the Respondents 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: October 25, 2010.

Dispute Resolution Officer