



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 for an order of possession, a monetary order for unpaid rent, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

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 Landlord and affirmation of the Tenant, I find that the Tenant was served with a Notice to End Tenancy for non-payment of rent on September 2, 2010, (the "Notice"). The Tenant did not dispute service of the Notice.

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. I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to September 15, 2010.

The Landlord testified that the monthly rent is \$975.00, that the Tenant made a partial payment of \$712.50 in August and a partial payment of \$487.00 in October. The Landlord testified that the current unpaid rent with late fees is \$827.50.

The Tenant did not dispute this amount, but testified that she has had difficulty in paying all the rent due to problems with roommates.

Analysis

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

I find the Tenant has not paid the outstanding rent owed to the Landlord and failed to apply to dispute the Notice, and therefore, is conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, on September 15, 2010.

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.

I find that the Landlord has established a total monetary claim of **\$877.50** comprised of unpaid rent and fees of \$827.50 and the \$50.00 fee paid by the Landlord for this application.

I order that the Landlord retain the deposit of **\$487.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$390.00**.

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

I have not allowed the Landlord's claim for the November 2010 rent as the same is not yet due and payable and the Landlord has not suffered that loss as of the day of the hearing. However, the Landlord is at liberty to make Application when and if this occurs.

Conclusion

The Tenant failed to pay rent and did not apply 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 and a monetary order for the balance due of **\$390.00**.

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 29, 2010.

Dispute Resolution Officer