



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 October 14, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on October 19, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

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

Background and Evidence

This month to month tenancy started on February 01, 2009. The market rent for this unit is \$1,876.00 per month and the tenants pay a subsidized rent of \$1,510.00 per month. Rent is due on the first of each month. The tenants paid a security deposit of \$500.00 on January 26, 2009.



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The landlord testifies that the tenants owe a balance of rent for August, 2010 of \$401.03 and rent for September, 2010 of \$1,510.00 to a total amount of \$1,911.03. The landlord testifies that a 10 Day Notice was served to the tenants on September 20, 2010 by posting this to the tenant's door. This Notice stated that the tenants had five days to pay the outstanding rent, dispute the Notice or the tenancy would end on September 30, 2010. The landlord testifies that since that time the tenants have also failed to pay rent for October, 2010 of \$1,510.00.

The landlord testifies that the tenants made two rent payments on October 18, 2010 one of \$1,510.00 and one of \$401.03. The tenants also made two rent payments on November 05, 2010 one of \$978.97 and one of \$1,421.03. The landlord states these payments were accepted for use and occupancy only and this was written on the tenant's receipts. The landlord states this now leaves an outstanding balance of rent owed for November, 2010 of \$531.03.

The landlord seeks an Order to keep the tenants security deposit of \$500.00 towards the rent arrears and to recover the \$50.00 filing fee.

The landlord also seeks an Order of Possession to take effect on November 30, 2010.

The tenants do not dispute that they owe rent to the landlord and state they have spoken to the landlord and hope to pay the remaining rent arrears by Monday November 15, 2010.

Analysis

Section 26 of the *Act* states a tenant must pay rent on the day it is due under the tenancy agreement. The tenants do not dispute that they owe rent to the landlord. Consequently, I find the landlord is entitled to recover rent arrears for November, 2010. However, the landlords' calculations show rent owed is now \$531.03. I have calculated the rent owed from the landlords' figures and find there is an arrear in the landlords' calculation and the actual amount owed is \$620.00. Therefore, I find the landlord is entitled to recover the amount of **\$620.00** from the tenants pursuant to s. 67 of the *Act*. I ORDER the landlord pursuant to s. 38(4)(b) of the *Act* to keep the tenant's security deposit of \$500.00 in partial payment of the rent arrears.



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I further find the landlord is entitled to recover the **\$50.00** filing fee from the tenants pursuant to section 72(1) of the Act.

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

Outstanding rent	\$620.00
Plus filing fee	\$50.00
Total amount due to the landlord	\$170.00

I accept that the tenants were 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 tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As the landlord posted the Notice to the tenant's door it was deemed to have been served on September 23, 2010 the third day after posting. Therefore, the amended date to end the tenancy would be October 03, 2010, pursuant to section 53 of the *Act*.

The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days. The tenants did pay \$1,911.03 on October 18, 2010 and \$2,400.00 on November 05, 2010 and as the landlord accepted these payments for use and occupancy only the tenancy was not reinstated.

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 amended date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlords' amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$170.00**. The order must be served on the tenants and is enforceable through the Provincial Court as an order of that Court.



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I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **November 30, 2010**. 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: November 10, 2010.

Dispute Resolution Officer