

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order for unpaid rent, to retain the security deposit in partial satisfaction of the claim, to recover late payment fees and for liquidated damages.

I dismiss the landlord's application for liquidated damages, with leave to reapply, as the Direct Request Proceeding is not the venue to determine liquidated damages.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 15, 2009 the landlord served tenant (2) with the Notice of Direct Request Proceeding via registered mail and that the landlord served tenant (1) in person, which tenant (1) signed receipt of. Signed proof of service documents and a registered mail receipt were submitted into evidence by the landlord.

The landlord received the Direct Request Proceeding package on March 15, 2009 and initiated service on March 15, 2009.

Based on the written submissions of the landlord, I find the tenants have been duly served with the Dispute Resolution Direct Request Proceeding documents for the purposes of an application under section 55, for an Order of Possession and section 67 for a Monetary Order.

### 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; to keep all or part of the security

deposit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence submitted by the landlord.

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for both tenants
- A copy of a residential tenancy agreement which was signed by the parties on November 15, 2008 indicating \$900.00 per month rent due on the first of the month, a deposit of \$285.00 was paid on November 14, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 2, 2009 with an effective vacancy date of February 13, 2009 for \$900.00 in unpaid rent

Documentary evidence filed by the landlord indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with tenant (1) on February 2, 2009 at 5:30 p.m. 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 rent or apply to dispute the Notice to End Tenancy within five days. I accept that the tenant has been served with notice to end tenancy effective on February 2, 2009.

### Analysis

**Order of Possession** - 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.

**Monetary Order** – I find that the landlord is entitled to a monetary claim for unpaid rent, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit, and that the landlord is entitled to recover the filing fee from the tenant as follows:

|   |                   |
|---|-------------------|
| Unpaid Rent for February 2009 and March 2009 (\$900.00 x 2) | \$1,800.00        |
| Filing fee  | <u>50.00</u>      |
| Sub total (Monetary Order in favor of the landlord)         | <b>\$1,850.00</b> |
| Less Security Deposit of \$375.00 plus interest of \$0.00   | - 285.00          |
| <b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>             | <b>\$1,565.00</b> |

With respect to the landlord's claim to recover late payment fees, Section 7(2) of the *Residential Tenancy Regulation* stipulates that a landlord must not charge the non-refundable fees, such as late payment fees, unless the tenancy agreement provides for that fee. The evidence supplied by the landlord does not support that the tenancy agreement provides for late fees to be charge so I dismiss the landlord's application for late payment fees without leave to reapply.

### Conclusion

I HEREBY DISMISS the landlord's application for liquidated damages, with leave to reapply, as the Direct Request Proceeding is not the venue to determine liquidated damages.

I HEREBY 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 Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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 \$1,565.00. The order must be

served on the respondent and is enforceable through the Provincial 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: April 23, 2009.

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Dispute Resolution Officer