



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DIRECT REQUEST 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 and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 18, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document sent by registered mail is deemed to have been served in five days.

Based on the written submissions of the landlord, I find the tenant has been duly 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; to keep 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, 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 to the tenant of the Notice of Direct Proceeding
- A copy of a residential tenancy agreement which was signed by the parties indicating \$450.00 per month rent and that a deposit of \$225.00 was paid on February 19, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 2, 2009 with a vacancy date of April 10, 2009 and \$250.00 in rental arrears

No copy of the resident ledger or account was submitted and I note that the application submitted by the landlord indicates arrears of \$300.00 in contradiction with the Ten-Day Notice that shows arrears of \$250.00. However, the evidence filed by the landlord indicates that the tenant had failed to pay rent owed for the month of April, 2009. The evidence indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord by registered mail sent on April 2, 2009 and on the afternoon of April 8, 2009 by posting the Notice on the door. 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 and evidently did not pay all of the arrears within five days. I accept that the tenant has been served with notice to end tenancy as declared by the landlord.

### Analysis

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.

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

I find that the discrepancy between the amount of arrears shown as owing on the application and the amount of arrears owed on the Notice makes a determination on the monetary compensation under section 67 impossible. Accordingly the landlord's application for a monetary order for rental arrears is dismissed without leave to reapply.

However, I find that the landlord is entitled to be reimbursed the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain this amount from the deposit held on behalf of the tenant.

May 2009

Date of Decision

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Dispute Resolution Officer