

## **DECISION**

Dispute Codes      OPR MNR 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 and to recover the filing fee from the tenant.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 20, 2009 the landlord served the female tenant with the Notice of Direct Request Proceeding in person. The landlord submitted an “unsigned” Proof of Service of the Notice of Direct Request Proceeding for the Male tenant.

The landlord received the Direct Request Proceeding package on March 13, 2009 and initiated service on April 20, 2009.

Based on the written submissions of the landlord, I find the female tenant has 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 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 signed Proof of Service of the Notice of Direct Proceeding for the female tenant
- A copy of a residential tenancy agreement which was signed by the parties on June 20, 2008, indicating \$800.00 per month rent due on the first of the month, a deposit of \$400.00 was paid on June 20, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 13, 2009 with an effective vacancy date of March 23, 2009 for \$937.50 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 the male tenant on March 13, 2009 at 6:00 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 March 23, 2009, 10 days after service was effected on March 13, 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** – The landlord has requested a monetary order against both tenants for unpaid rent in the amount of \$937.50 which he lists as being payable on March 1, 2009, yet the tenancy agreement lists the monthly rent as being \$800.00 per month. I find that in the absence of a signed proof of service of the direct request proceeding for the male tenant, and a breakdown of what the \$937.50 is comprised of, that I cannot

award a monetary order at this time and dismiss the landlord's request with leave to reapply.

Conclusion

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 DISMISS the landlord's request for a Monetary Order with leave to reapply.

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: May 01, 2009.

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Dispute Resolution Officer