

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 May 13, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail and was supported by the documentary evidence supplied by the landlord.

The landlord received the Direct Request Proceeding package on May 12, 2009 and initiated service on May 13, 2009.

Based on the written submissions of the landlord, I find the 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 Proof of Service of the Notice of Direct Proceeding for the tenant
- A copy of a residential tenancy agreement which was signed by the male tenant and landlord but is not dated. The tenancy agreement indicates \$1265.00 per month rent is due on the first of the month. There is a notation at the end of the agreement which refers to a security deposit payment plan.
- A copy of a residential tenancy agreement which was signed by a male and female tenant which is not dated.
- A copy of a letter from the female tenant ending her tenancy.
- A copy of a returned NSF cheque issued by the male tenant to the landlord on 2009-04-04
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 05, 2009 with an effective vacancy date of May 15, 2009 for \$2,530.00 in unpaid rent

Documentary evidence filed by the landlord indicates that the male tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the tenant on May 05, 2009 at 11:30 a.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 May 15, 2009, 10 days after service was effected on May 5, 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 states on his application that the cheques issued by the tenant for both April and May were returned NSF however the landlord only provided a copy of the returned cheque from April.

I also find it difficult to determine the actual amount and date the tenant paid money towards the damage deposit. The landlord has applied to keep the damage deposit in partial satisfaction of their claim but does not list the date and amounts of security deposit received from the male tenant.

Based on the aforementioned I hereby dismiss the landlord's monetary claim for unpaid rent and I hereby dismiss the landlord's application to withhold the tenant's security deposit with leave to reapply.

As the landlord was partially successful in their application I hereby order that the landlord is entitled to recover the filing fee from the tenant.

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 FIND in favor of the landlord's claim to recover the cost of the filing fee from the tenant. A copy of the landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondent and is enforceable through the Provincial Court 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: May 19, 2009.

Dispute Resolution Officer