

## **DECISION AND REASONS**

### **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 4, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding and that the tenant signed the Notice of Direct Request acknowledging receipt of the proceeding Package. The landlord received the Direct Request Proceeding package on May 1, 2009 and initiated service on May 4, 2009. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the day it is personally served.

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 of the Notice of Direct Proceeding for the tenant
- A copy of a residential tenancy agreement which was signed by the parties on May 16, 2008 indicating \$625.00 per month rent due on the first day of the month, a deposit of \$300.00 was to be paid on May 20, 2008
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 21, 2009 with an effective vacancy date of May 1, 2009 for \$3,425.00 in unpaid rent as detailed in a letter attached to the Notice, due on April 1, 2009
- A letter dated April 8, 2009 detailing the amount owed by the tenant, which was

attached to the 10 Day Notice to End Tenancy served to the tenant on April 21, 2009

Documentary evidence filed by the landlord indicates that the tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord on April 21, 2009. The tenant has signed a Proof of Service document acknowledging receipt of the Notice to End Tenancy at 4:55 pm at the rental unit address. 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.

The landlord has requested a monetary order for unpaid rent for June, August, September, 2008; January, March and April 2009. The full amount of rent is owed for each month. The landlord evidence indicates that a cheque including the \$300.00 deposit was returned by the bank. The landlord acknowledges that the tenant is owed the equivalent of one month's rent for work he completed on the rental unit.

### Analysis

I accept that the tenant has been served with notice to end tenancy effective on April 21, 2009.

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; May 1, 2009.

### 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 landlord is entitled to monetary compensation under section 67 in the amount of **\$3,175.00** comprised of \$3,125.00 for six months rent, less one month for work completed by the tenant and the \$50.00 fee paid by the Landlord for this application. The landlord has claimed the deposit, but this deposit was not paid by the tenant; therefore the landlord is unable to retain any deposit. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated May 12, 2009.

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Dispute Resolution Officer