

## **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 8, 2009 the landlord personally served the tenant with the Notice of Direct Request Proceeding at the rental unit address. The landlord received the Direct Request Proceeding package on May 8, 2009 and initiated service on the same day. 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 November 29, 2008 indicating \$440.00 per month rent due on the first day of the month, a deposit of \$240.00 was paid on November 29, 2009
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 2, 2009 with an effective vacancy date of May 12, 2009 for \$440.00 in unpaid rent due on May 1, 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 agent RB on May 2, 2009 at 6:20 pm. The landlord provided a Proof of Service document signed by the tenant acknowledging service of the Notice to End Tenancy. 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 \$440.00 unpaid May rent and a \$20.00 late fee. The late fee is included in a clause of the tenancy agreement addendum which states that the late fee of \$20.00 is charged plus rent paid after the 6<sup>th</sup> day of the month will accrue an additional charge of \$10.00 per day.

### Analysis

I accept that the tenant has been served with notice to end tenancy effective on May 2, 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 12, 2009.

I find that the landlord is entitled to a monetary order for unpaid rent of \$440.00 plus a late fee of \$20.00. I note that the addendum to the tenancy agreement requiring

payments of \$10.00 per day for arrears beyond the 6<sup>th</sup> day of the month is a breach of Residential Tenancy Branch Regulation 7, which determines allowable fees.

As the landlord application has merit I find the landlord is entitled to filing fee costs.

### 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 **\$510.00** comprised of \$440.00 rent, \$20.00 late fee owed and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposit and interest held of **\$240.33** in partial satisfaction of the claim and grant an order for the balance due of **\$269.67**. 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 14, 2009.

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Dispute Resolution Officer