

## **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 1, 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 April 30 and initiated service within three days. 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 February 9, 2009 indicating \$636.00 rent and \$390.00 subsidized rent per month, rent is due on the first day of each month, a deposit of \$318.00 was paid on February 9, 2009
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 6, 2009 with an effective vacancy date of April 14, 2009 for \$261.62 in unpaid rent due on April 1, 2009

Documentary evidence filed by the landlord indicates that at 9:10 am the tenant was personally served a 10 Day Notice to End Tenancy for Unpaid Rent by the landlord on

April 6, 2009 at the rental unit. The landlord provided a Proof of Service document signed by a witness, confirming personal service occurred. 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 April rent of \$261.62 and a \$10.00 late rent payment fee. The landlord application for dispute resolution requests a monetary order of \$311.62.

### Analysis

I accept that the tenant has been served with notice to end tenancy effective on April 6, 2009; the date of personal service.

Section 53 of the Act determines that an incorrect date on a Notice may be changed to the earliest date allowed under the Act; therefore the effective vacancy date is changed to April 16, 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; April 16, 2009.

I find that the landlord is entitled to a monetary Order of \$261.62 in unpaid rent and a \$10.00 late payment fee.

The landlord's application has merit therefore; I find that 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 **\$311.62** comprised of \$261.62 in unpaid rent and late fee of \$10.00 plus the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposit held of **\$311.62** in satisfaction of the claim. I Order that the landlord return, forthwith, the balance of the deposit of \$6.38 to the tenant.

Dated May 12, 2009.

---

Dispute Resolution Officer