



## **Dispute Resolution Services**

Residential Tenancy Branch  
Ministry of Housing and Social Development

### **DIRECT REQUEST DECISION**

#### Dispute Codes

OPR, MNR, MNSD, FF

#### Introduction

The 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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 10, 2009, the landlord served the tenant with the Notice of Direct Request Proceeding. The applicant provided a receipt to confirm service by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served in 5 days when sent by registered mail.

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 rental arrears, to retain the security deposit from the tenant and reimbursement 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.

### Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Application for Dispute Resolution and a "Proof of Service" form stating that the Ten-Day Notice to End Tenancy, was served by registered mail sent on May 26, 2009.

The purpose of serving documents under the *Act* is to notify the person being served of their failure to comply with the *Act* and of their rights under the *Act* in response. The landlord is seeking to end the tenancy due to this breach and the landlord has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy. I find that find that the tenant was properly served with the Ten-Day Notice to End Tenancy for Unpaid Rent.

### Analysis

I find that the tenant failed to pay rent in the amount of \$1,150.00 that was properly due on April 1, 2009 and \$1,150.00 that was properly due on May 1, 2009.

Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

I find that the landlord is entitled to receive rental arrears for April and May 2009 and has established a total monetary claim of \$2,350.00 comprised of \$1,150.00 rental arrears for the month of April 2009, \$1,150.00 rental arrears for the month of May 2009 and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit and interest of \$ \$575.00 in partial satisfaction of the claim leaving a balance due of \$1,775.00

### Commentary

The landlord submitted into evidence a copy of the tenancy agreement and I note that under paragraph 4 of this agreement the parties had initialled a provision agreeing that a portion of the security deposit would be used for damage. Please note that in regards to the security deposit, a tenancy agreement containing a term where a tenant agrees in advance to forfeit the deposit of any portion thereof is in violation of section 20(e) of the Act. A deposit may only be retained if the tenant signs it over at the end of the tenancy, or if the landlord makes an application for dispute resolution and obtains an order to retain the deposit for proven damages. Be advised that the above data is being provided solely for the purpose of informing the landlord and does not affect the determination of the matter currently before me.

### Conclusion

I hereby issue an Order of Possession in favour of the landlord 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 grant the Landlord an order under section 67 for \$1,775.00. 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.

June 2009

Date of Decision

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Dispute Resolution Officer