



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DIRECT REQUEST DECISION**

### Dispute Codes

OPR, MNR, 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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the landlord served the tenant with the Notice of Direct Request Proceeding by registered mail sent on June 10, 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.

### 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 to the tenant of the Notice of Direct Proceeding
- A copy of a residential tenancy agreement which was signed by the parties indicating rent of \$1,450.00 per month rent due on the first day of the month and that utilities including electricity and heat were not included in the rent. The agreement indicates that a security deposit of \$565.00 was paid on September 15, 1998.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 21, 2009 showing a vacancy date of May 21, 2009 for \$1,250.00 in rental arrears and \$150.00 for utilities owed for which a written demand was apparently issued on May 20, 2009.
- A copy of proof of service of the Ten-Day Notice

The landlord did not submit a tenant ledger showing the tenant's rental account into evidence. However the landlord indicates that the tenant had failed to pay \$1,250.00 rent owed presumably for the month of May 2009. In addition, the cost of utilities in the amount of \$150.00 is being claimed and for a total of \$1,400.00 in the monetary claim. The evidence indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail sent on May 21, 2009. Section 90(c) provides that a Notice, if given or served by registered mail, is deemed to have been served on the 5th day after it was sent. I accept that the tenant has been served with the notice to end tenancy as of May 26, 2009. In regards to the effective date of May 21, 2009 for the ending of the tenancy, I find that the effective date must be amended pursuant to 53(2) to comply with the Act and therefore the effective date to end the tenancy with a Ten-Day Notice deemed served on May 26, 2009, would be changed to June 5, 2009.

## Analysis

The Notice stated that the tenant had five days to pay the rent or to apply for Dispute Resolution, failing which there is a conclusive presumption that the tenant has accepted that the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days and did not pay the arrears within five days.

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.

I also find that the landlord has submitted sufficient support to establish entitlement to compensation for accrued rental arrears owed in the amount of \$1,250.00.

In regards to the claim for utilities, I draw attention to section 46 (6) which states that if a tenancy agreement requires the tenant to pay utility charges **to the landlord**, and the utility charges are **unpaid more than 30 days after the tenant is given a written demand for payment** of them, then the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section. I find that on the Ten-Day Notice form dated May 21, 2009, indicated that \$150.00 was owed for and that the landlord had made a written demand for the utilities on May 20, 2009. I find that while the tenancy agreement shows that utilities are not included in the rent, there is nothing in the agreement requiring payment of utilities to the landlord. Therefore, I find I must dismiss the portion of the application relating to the \$150.00 utilities owed.

Moreover, even if there was a term in the agreement stating that the tenant had to pay utilities to the landlord, the landlord did not prove that a written demand for the utility payment was made at least 30 days before including this debt as arrears on the Ten-Day Notice.

### 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 \$1,300.00.00 comprised of rental arrears for April 2009 in the amount of \$1,250.00 and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the security deposit and interest held of \$631.29 in partial satisfaction of the claim and grant an order for the balance due of \$668.71. 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