

## **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, a Monetary Order for unpaid rent and a request to recover the cost of the filing fee from the tenants.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 20, 2009 the landlord served the male tenant with the Notice of Direct Request Proceeding in person at the rental unit. The Proof of Service form was signed by the male tenant.

The landlord received the Direct Request Proceeding package on May 20, 2009 and initiated service on May 20, 2009.

Based on the written submissions of the landlord, I find the male tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents for the purposes of an application under section 55, for an Order of Possession for the landlord pursuant to Section 89(2)(d) of the *Residential Tenancy Act*.

### 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 and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 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 to the male tenant
- A copy of a residential tenancy agreement which was signed by the parties on August 15, 2008 indicating \$1,200.00 per month rent, \$600.00 due on the first of the month and \$600.00 due on the 15<sup>th</sup> of the month, a deposit of \$600.00 was paid on August 15, 2008.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 11, 2009 with an effective vacancy date of May 21, 2009 for \$600.00 in unpaid rent
- Proof of Service of 10 Day Notice to End Tenancy which the female tenant signed under "Tenant's acknowledgement"

Documentary evidence filed by the landlord indicates that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by sliding the notice under the tenants' door on May 11, 2009 at 7:00 p.m. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the rent or apply to dispute the Notice to End Tenancy within five days.

### Analysis

Section 88 of the *Residential Tenancy Act* stipulates that documents, other than those referred to in section 89, (special rules for certain documents), that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways; subsection (g) states that the document can be attached to a door or other conspicuous place at the address at which the person resides. Given that the female tenant has signed acknowledgement of receipt of the document that was slid under the tenants' door, I accept that the tenants have been served with the 10 Day

Notice to End Tenancy effective on May 24, 2009, 10 days after service was effected on May 14, 2009. (3 days after it was slid under the door.)

The landlord has requested an Order of possession against both tenants. Section 89(2) of the Act determines that the landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of possession at the tenant's residence with an adult who apparently resides with the tenant. As both tenants are signatories to the tenancy agreement I have determined that both parties have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

**Order of Possession** - Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the Act, to have accepted that the tenancy ended on the effective date of the Notice.

**Monetary Order** – Section 88(1) of the Act determines the method of service for documents. The landlord has applied for a monetary Order which requires that the landlord serve each tenant as set out under section 89(1). In this case only one of the two tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both tenants must be amended to include only the male tenant who has been properly served with Notice of this Proceeding. As the second tenant has not been properly served the Application for Dispute Resolution as required by section 89(1) of the Act the monetary claim against the female tenant is dismissed.

The landlord has submitted a monetary claim for \$2,850 which does not match the amount of \$600.00 listed on the 10 Day Notice to End Tenancy. I note that there is a hand written amount of \$400.00 listed on the 10 Day Notice to End Tenancy , however there is no way to determine in a Direct Request Proceeding if this hand written amount was added to the notice before or after it was served to the tenants. The landlord has

included a claim of \$1,200.00 for loss of rent, advertising and showing to prospective tenants. I find that these claims can not be determined in a Direct Request Proceeding as the landlord is not able to present the merits of their claim nor are the tenants given the opportunity to refute the claim.

Based on the foregoing, I find that the landlord is requesting a monetary claim that does not meet the requirements for a Direct Request Proceeding. To find in favour of an application for a monetary claim, I must be satisfied that the rights of all parties have been upheld by ensuring the parties have been given proper notice and the opportunity to defend their rights. I dismiss the landlord's monetary claim for unpaid rent and loss of rent with leave to reapply.

**Recover the Cost of the Filing Fee** – As the landlord has been partially successful in his application I find that the landlord is entitled to recover the cost of the filing fee from the tenants.

I find that the landlord is entitled to recover the filing fee from the tenants and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenant's security deposit as follows:

Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$50.00</b>
Less Security Deposit of \$600.00 plus interest of \$3.42	- 603.42
<b>BALANCE OF THE TENANTS' SECURITY DEPOSIT</b>	<b>\$553.42</b>

The balance of the tenants' security deposit is to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY 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 HEREBY DISMISS the landlord's application for a Monetary Order with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 09, 2009.

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Dispute Resolution Officer