

## **DECISION**

Dispute Codes      OPR 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 to recover the cost of the filing fee from the tenant for this application.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 28, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding by posting the notice on the door at the rental unit.

The landlord received the Direct Request Proceeding package on May 27, 2009 and initiated service on May 28, 2009. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served 3 days from the date it was attached to a door.

Based on the written submissions of the landlord, I find the 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 and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections, 55, 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 October 7, 2003 indicating \$1,300.00 per month rent due on the first of the month, a deposit of \$650.00 was paid and dated October 7, 2003
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 6, 2009 with an effective vacancy date of May 16, 2009 for \$1,377.00 in unpaid rent

Documentary evidence filed by the landlord indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the tenant's door on May 6, 2009 at 2:24 p.m. 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 pay the rent or apply to dispute the Notice to End Tenancy within five days. I accept that the tenant has been served with notice to end tenancy effective on May 19, 2009, 10 days after service was effected on May 9, 2009. (3 days after it was posted to the door)

### Analysis

**Order of Possession** - 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.

**\$50.00 filing fee** – The landlord has been successful in their application and I find that the landlord is entitled to recover the cost of the filing fee from the tenant 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
Less Security Deposit of \$650.00 plus interest of \$23.01	- 673.01
<b>Balance of Security Deposit</b>	<b>\$623.01</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.

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 10, 2009.

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Dispute Resolution Officer