

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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 29, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding by posting the Notice to the door of the rental unit. The landlord received the Direct Request Proceeding package on May 29, 2009 and initiated service on the same day. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the third day after posting.

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 and to recover the filing fee from the tenant 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 for the tenant

- A copy of a residential tenancy agreement which was signed by the parties on March 31, 2009 indicating \$2,200.00 per month rent due by the first day of the month, a deposit of \$1,100.00 was paid
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 20, 2009 with an effective vacancy date of May 30, 2009 for \$2,200.00 in unpaid rent due on May 1, 2009

Documentary evidence filed by the landlord indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by posting the Notice to the door of the rental unit on May 20, 2009 at 10:45 a.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 apply to dispute the Notice to End Tenancy within five days.

The landlord has requested a monetary order in the sum of \$2,200.00.

Analysis

I accept that the tenant has been served with notice to end tenancy effective on May 23, 2009; three days after posting.

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 June 3, 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; June 3, 2009.

I find that the landlord is entitled to an Order of possession effective two days after service.

The landlord has applied for a monetary Order and has served the tenant with Notice of this proceeding by posting the Notice to the door of the rental unit. When a party

requests a monetary Order the hearing package must be served to the respondent either in person, by registered mail or by another method as ordered by the Director. Service methods are determined under sections 88, 89 and 90 of the Act. The Proof of Service document submitted by the landlord also indicates that the applicant should not post the Notice of Direct Request if requesting a monetary Order. Therefore, the landlord's application for a monetary Order is dismissed with leave to reapply.

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.

The landlord has not applied to retain any deposit that may have been paid by the tenant. Any deposit paid is held in trust by the landlord and must be disbursed as determined by section 38 of the Act.

The landlord's monetary claim is dismissed with leave to reapply,

Dated June 10, 2009.

Dispute Resolution Officer