

DECISION AND REASONS

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent and to retain all or part of the Security Deposit.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding, which declares that on July 16, 2009 the landlord served each tenant with the Notice of Direct Request Proceeding by Registered Mail to the dispute address. Pursuant to section 90(a) of the Residential Tenancy Act I deem the tenants to have been served on the fifth day after the documents were sent.

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 an order to retain the Security Deposit and 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)*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding, served in person on July 16, 2009 and witnessed by a third party and signed by the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on August 20, 2007 for the monthly rent \$800.00 due on 1st of the month and a security deposit of \$400.00 and pet damage of \$400.00 was paid
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 3 with an effective vacancy date of July 13, 2009 due to \$829.00 in unpaid rent .

Documentary evidence filed by the landlord declares that the tenants failed to pay rent

due on July 1, 2009 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when the notice was served in person to the tenant in the presence of a Witness on July 3, 2009 at 6:00 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.

Analysis

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on July 3, 2009 and the effective date of the notice is July 13, 2009 pursuant to section 53 of the *Act*. I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 46 (4) of the *Act*.

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.

The landlord has requested a monetary claim in this application for the sum of \$854.00 which is described on the Application for Dispute Resolution to consist of unpaid rent. I find that the monthly rental rate under the tenancy agreement is shown as \$800.00 and the amount owing shown on the Ten-Day Notice to end Tenancy is \$829.00, but the amount of arrears indicated on the landlord's application is \$854.00. The landlord has not included any details in the box on the application form titled "Details of the Dispute" and there is nothing to explain the discrepancies nor did the landlord include a tenant account ledger showing the tenant's payment history. As I find that it is not possible to conclusively determine the amount of arrears owed for the purpose of issuing a monetary order, the landlord's monetary claim must be dismissed.

Conclusion

The landlord is entitled to an Order of Possession effective **two days after service on the tenant**. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

The portion of the landlord's claim requesting a monetary order for rental arrears is dismissed without leave. The tenant's security and pet damage deposits must be administered according to section 38 of the *Act*.

Dated July 2009.

Dispute Resolution Officer