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, with a copy of the Registered Mail receipt, which declares that on July 19, 2009 the landlord served the 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, with a copy of the Registered Mail receipt, for the tenant;

- A copy of a residential tenancy agreement which was signed by the parties on June 20, 2009 for a One-year term tenancy beginning May 1, 2009 for the monthly rent $1,575 due on 1st of the month and a deposit of $787.50 was paid.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 5, 2009 with an effective vacancy date of July 19, 2009 due to $1,575.00 in unpaid rent .

Documentary evidence filed by the landlord declares that the tenants failed to pay a portion of the rent for July and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when the notice was posted to the door of the dispute address in the presence of a Witness on July 5, 2009 at 5:30 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 8, 2009. 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 $1,575.00 which is further described on the Application for Dispute Resolution to consist of unpaid rent.

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 landlord is entitled to monetary compensation under section 67 in the amount of **$1,625.00** comprised of $1,575.00 in unpaid rent and the $50.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposit and interest held of **$787.50** in partial satisfaction of the claim and grant an order for the balance due of **$837.50**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated July 2009

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Dispute Resolution Officer