



Dispute Resolution Services

Residential Tenancy Branch

Ministry of Housing and Social Development

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 June 19, 2009 the landlord served each tenant with the Notice of Direct Request Proceeding by leaving it with the tenant (BR) at the dispute address. Pursuant to section 90(a) of the Residential Tenancy Act I deem the tenants to have been served on the day the landlord declares service occurred.

Based on the written submissions of the Landlord, I find the tenants have 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 tenants 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 to the tenant (BR);
- A copy of a residential tenancy agreement which was signed by the parties on May 1, 2009 for a 1 year fixed term tenancy continuing on a month to month basis beginning September 1, 2008 for the monthly rent \$1075.00 due on 1st of the month and a deposit of \$537.50 was paid on May 1, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 2, 2009 with an effective vacancy date of June 12, 2009 due to \$1075.00 in unpaid rent.

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

for June, 2009 and that the tenants was served a 10 Day Notice to End Tenancy for Unpaid Rent when the notice was left personally with both tenants at the dispute address in the presence of a Witness on June 2, 2009. 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 tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on June 2, 2009. I accept the evidence before me that the tenant has 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 \$1075.00 which is further described on the Application for Dispute Resolution to consist of unpaid rent.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the landlord serve both of the tenants as set out under Section 89(1). In this case only the one tenant (BR) has been personally served with the Notice of Direct Request Proceeding documents. Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement. Therefore, I find that the request for a Monetary Order against both of the tenants must be amended to include only the tenant who has been properly served with Notice of this Proceeding. As the service of the Notice of Direct Request Proceeding documents upon the other tenant (TH) has not been proven, as required by Section 89(1) of the Act, the Landlord's monetary claim against the (TH), tenant, is dismissed without leave to reapply.

The Landlord has requested an Order of Possession against both of the tenants. Section 89(2) of the Act determines that the Landlord may leave a copy of the Notice of Direct Request Proceeding documents related to a request for an Order of Possession at the tenants' residence with an adult who apparently resides with the tenant. I therefore find that both of the tenants have been sufficiently served with the portion of the Notice of Direct Request Proceeding relating to Section 55 of the Act, requesting an Order of Possession.

Conclusion

The landlord is entitled to an Order of Possession effective **two days after service on the tenants**. 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

\$1125.00 comprised of \$1075.00 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 **\$537.50** in partial satisfaction of the claim and grant an order against (BR), tenant, only for the balance due of **\$587.50**. 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.

Dispute Resolution Officer