



# 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, with a copy of the Registered Mail receipt, which declares that on DT 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, with a copy of the Registered Mail receipt, for each of the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on January 25, 2007 beginning February 1, 2007 for the monthly rent \$800.00 due on 1<sup>st</sup> of the month and a security deposit of \$400.00 and pet damage deposit of \$400.00 was paid.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 3, 2009 with an effective vacancy date of July 13, 2009 due to \$850.00 in unpaid rent and late charges .

Documentary evidence filed by the landlord declares that the tenants failed to pay \$850.00 of the rent for July 2009 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 3, 2009 at 3:47 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 6, 2009 and the effective date of the notice is amended to July 16, 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 above, 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 \$850.00 which is further described on the Application for Dispute Resolution to consist of unpaid rent of \$800.00 and late fees of \$50.00.

In regards to the \$50.00 claim for late fees and returned cheques I find that this cannot be awarded under section 55(4) of the *Act* which only applies to an Order of Possession and rent owed, and does not permit a monetary order for other kinds of damages or debts, including late fees or bank fees owed under the tenancy agreement. Therefore, I find I must dismiss this portion of the landlord's application and the claim for \$50.00 for late fees without leave.

I find that the landlord is entitled to a total monetary claim of \$850.00 comprised of \$800.00 for rental arrears for July 2009 and the \$50.00 fee to file this application

### 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 **\$850.00**. I order that the landlord may retain the security and pet damage deposits and interest held of **\$823.38** in partial satisfaction of the claim and grant an order for the balance due of **\$26.62**. 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