

## **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 hand at 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, confirming service to each of the tenants;
- A copy of a residential tenancy agreement with the landlord's name on the first page but not showing either of the tenant's names on the first page. This agreement was signed by the landlord and one of the tenants, KM, on January 28, 2008 for a tenancy beginning February 1, 2008 with monthly rent of \$675.00 due on 1<sup>st</sup> of the month. A deposit of \$335.00 was paid.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 1, 2009 with an effective vacancy date of July 31, 2009 due to \$1,500.00 in unpaid rent.

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

owed and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent in person at the dispute address in the presence of a Witness on July 2, 2009 at 6:30 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 2, 2009 and the effective date of the notice is stated as July 31, 2009. I accept the evidence before me that the tenants have failed to pay 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 \$1,500.00 which is further 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 \$675.00 per month and the amount owing shown on the Ten-Day Notice to End Tenancy is shown as \$1,500.00. On the application the monetary claim is also shown as \$1,500.00 and in the section titled, "*Details of the Dispute*", the landlord has not included any explanation other than indicating "*Order of Possession*". No detailed accounting or ledger showing the tenant's payment history or any other information was included to show how the amount of \$1,500.00 was incurred. As I find that it is not possible to conclusively determine what these arrears pertain to, for the purpose of issuing a monetary order, I find that 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 deposit must be administered in compliance with section 38 of the Act.

Dated July 2009.

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Dispute Resolution Officer