

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession, a Monetary Order and to recover the cost of the filing fee from the Tenant for this application.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 8, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding, served via registered mail, pursuant to section 90(a) of the *Residential Tenancy Act*, I deem the Tenant to have been served on the fifth day after mailing.

Based on the written submissions of the landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents for the purposes of an application under section 55, for an Order of Possession and section 67 for a Monetary Order.

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 to 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)*. I have reviewed all documentary evidence submitted by the landlord.

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.

- A copy of a residential tenancy agreement which was signed by the parties on February 26, 2009, indicating \$2,500.00 per month rent due on the first of the month, a deposit of \$1,250.00 was to be paid on March 5, 2009.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on July 2, 2009 with an effective vacancy date of July 12, 2009 for \$5,920.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the Tenant on July 2, 2009 at 8:15 p.m. as witnessed and signed on the proof of service form. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Tenant did not pay the rent or apply to dispute the Notice to End Tenancy within five days. I accept that the Tenant has been served with notice to end tenancy effective on July 12, 2009, 10 days after service was effected on July 2, 2009.

Analysis

Order of Possession - 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.

Monetary Order – The Landlord has applied through the Direct Request process for greater than two months unpaid rent for a claim in the amount of \$5,920.00, where he had originally requested to keep all or part of the security deposit but then crossed out this request on his application. The Landlord failed to supply a ledger or copies of receipts issued to the Tenant showing payments received in support of his application.

I find that based on the evidence before me I cannot determine if or when a security deposit was paid or proof of partial rent payments made by the Tenant to the Landlord. Based on the aforementioned I find that the Landlord has failed to present the merits of

his application for a Monetary Order, through the Direct Request process, and I hereby dismiss his monetary claim with leave to reapply.

Conclusion

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

I HEREBY DISMISS the Landlord's monetary claim, with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 17, 2009.

Dispute Resolution Officer