

DECISION

Dispute Codes OPR MNR MNSD

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, a Monetary Order, and an Order to retain the security deposit.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 10, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. The Tenant was deemed to have received the hearing documents on June 15, 2009, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*.

Based on the written submissions of the Landlord, I find that the Tenant has been 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 to keep all or part of the security deposit, pursuant to sections 38, 46, 55, and 67, 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 for the Tenant;

- A copy of a residential tenancy agreement which was signed by all parties for a month to month tenancy beginning November 4, 2008 for the monthly rent of \$900.00 due on 1st of the month and a deposit of \$450.00 was paid on November 3, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, June 28, 2009 with an effective vacancy date of July 08, 2009 due to \$900.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the Tenant's door on June 28, 2009 at 4:30 p.m.

Analysis

Order of Possession - 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 1, 2009, three days after it was posted to the Tenant's door and the effective date of the notice is July 11, 2009 pursuant to section 90 of the *Act*. 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.

Monetary Order – I find that the Landlord has listed \$950.00 for unpaid rent on his application for dispute resolution however the 10 Day Notice to End Tenancy was issued for only \$900.00 in unpaid rent. Based on the aforementioned contradictory information, I find that the landlord's monetary claim does not meet the criteria to be reviewed through a direct request process and hereby dismiss the Landlord's 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 Tenant 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 22, 2009.

Dispute Resolution Officer