

DECISION

Dispute Codes OPR MNR 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, a Monetary Order, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 20, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenants are deemed to be served the hearing documents on July 25, 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 Tenants have 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 utilities; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 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 for each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on September 4, 2008 for a month to month tenancy beginning September 4, 2008

for the monthly rent of \$895.00 due on 1st of the month and a deposit of \$447.50 was to be paid on or before September 4, 2008; I note that the tenancy agreement appears to have been originally issued as a fixed term tenancy set to expire 12 months later on August 1, 2009 and that this was scratched out, **without initialing it by all parties**, and a month to month term was selected. I deem the tenancy agreement to be month to month tenancy if a fixed term cannot be proven so I hereby accept that a month to month tenancy exists; and

- 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 due to \$453.56 in unpaid rent and \$75.00 in unpaid Utilities - Storage.

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 on the Tenant's door on July 2, 2009 at 11:40 a.m. in the presence of a witness.

Analysis

Order of Possession - 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 July 5, 2009 (three days after it was posted to the Tenants' door) and the effective date of the notice is July 15, 2009 pursuant to section 90 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 foregoing, I find that the Tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Unpaid Utilities - The 10 Day Notice to End Tenancy was issued listing "You have failed to pay utilities in the amount of \$75.00." Section 46 of the *Residential Tenancy Act* states that if utility charges are unpaid more than 30 days **after the tenant is given a written demand for payment of them**, the landlord may treat the unpaid utility

charges as unpaid rent and may give notice under this section by issuing a 10 Day Notice to End Tenancy. I note that the Landlord did not provide evidence to prove that a written demand was issued to the Tenants for the unpaid utilities/storage and there is no evidence in support of what the utility charges represent. Based on the aforementioned I hereby dismiss the Landlord's claim for unpaid utilities of \$75.00, without leave to reapply.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for July 2009	\$453.56
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$503.56

I hereby order the Tenants' security deposit to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

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

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$503.56. The order must be served on the respondent Tenants and is enforceable through the Provincial Court as an order of that Court.

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: August 04, 2009.

Dispute Resolution Officer