

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 Tenant 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 the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipt numbers were provided in the Landlord's documentary evidence. The Tenant is deemed to have been served the Direct Request Proceeding documents on July 25, 2009, the fifth day after they were mailed pursuant 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 recover the cost of the filing fee, 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 the Tenant;

- A copy of a residential tenancy agreement which was signed by the Tenant and the Landlord on November 13, 2008 for a month to month tenancy beginning November 15, 2008 for the monthly rent of \$595.00 due on 1st of the month and a security deposit of \$595.00 was paid on or before November 15, 2008.
- 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 \$640.00 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 when it was posted to the Tenant's door on July 2, 2009 at 12:15 p.m. in the presence of a witness.

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 Tenant on July 5, 2009, three days after it was posted to the Tenant's 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 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 Claim – I find that the Landlord has listed \$640.00 for unpaid rent on his application for dispute resolution and on the 10 Day Notice to End Tenancy however the tenancy agreement stipulates that rent is payable in the amount of \$595.00. There was no evidence submitted by the Landlord to support the difference of \$45.00 between the amount claimed and the amount payable as per the tenancy agreement. 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 without leave to reapply.

Filing fee - \$50.00. I find that the Landlord has succeeded in large and that he should recover the filing fee from the Tenant.

Security Deposit – Section 19 of the *Residential Tenancy Act* stipulates that a Landlord must not require or accept a security deposit that is great than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement. In this case the security deposit collected is not to be more than \$297.50 ($\frac{1}{2}$ of \$595.00) however based on the tenancy agreement \$595.00 was accepted by the Landlord.

Section 19(2) states that if a Landlord accepts a security deposit that is greater than the amount permitted the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Based on the aforementioned I hereby order the Landlord to apply the security deposit overpayment to the unpaid rent.

Monetary Order – I find that the Landlord is entitled to recover the filing fee from the Tenant and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest.

Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$50.00
\$595.00 security deposit plus \$1.15 interest from November 15, 2008 to August 5, 2009	-596.15
Over payment of Security Deposit applied to unpaid rent	297.50
Balance of Security Deposit and Interest	\$248.65

The balance of the Tenants' security deposit is 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 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, without 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: August 05, 2009.

Dispute Resolution Officer