

## **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, an Order to retain the security deposit, 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 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 September 16, 2002 for a 1 year fixed term set to expire on

September 30, 2003 after which it converted to a month to month tenancy with a monthly rent of \$625.00 due on 1st of the month and a deposit of \$312.50 was paid on or before September 13, 2002.

- 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 \$676.00 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 on the Tenant's door on July 2, 2009 at 10:47 a.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 \$676.00 for unpaid rent on his application for dispute resolution and the 10 Day Notice to End Tenancy however the tenant agreements stipulates that rent is payable in the amount of \$625.00. The Landlord did not provide evidence to substantiate the amount the Landlord is claiming as outstanding rent claimed or why the amount showing on the tenancy agreement as the amount due for rent is different. 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.

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

**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.

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| Filing fee   | 50.00           |
| Sub total (Monetary Order in favor of the landlord)  | <b>\$50.00</b>  |
| Less Security Deposit of \$312.50 plus interest of \$11.06<br>(September 13, 2002 to August 5, 2009) | -323.56         |
| <b>Balance of Security Deposit and Interest</b>  | <b>\$273.56</b> |

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, 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: August 05, 2009.

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Dispute Resolution Officer