

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 submitted in the Landlord's documentary evidence. The Tenant is 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 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 filing fee from the Tenant for the cost of the Application for Dispute Resolution, 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 all parties on December 7, 2008 for a month to month tenancy beginning December 7, 2008 for the monthly rent of \$1,150.00 due on 1st of the month and a deposit of \$575.00 was paid on or before December 6, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 3, 2009 with an effective vacancy date of July 13, 2009 due to \$1, 150.00 in unpaid rent; and
- Statement of registration of general partnership as evidence of the Landlord's name change

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 3, 2009 at 12:00 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 6, 2009, three days after it was posted to the Tenant's door, and the effective date of the notice is July 16, 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.

Partial Payment Received & Monetary Order Requested – The Landlord has applied for a monetary claim of \$180.00 for unpaid rent while the 10 Day Notice to End Tenancy was issued for \$1,150.00 of unpaid rent. I note that the Landlord did not provide proof of receipt of payment with their application which would prove the date the partial payment was received and that any receipts were issued for “use and occupancy only”. As

\$180.00 is still being claimed I have determined on a balance of probabilities that the Tenant has not paid the rent “in full” by the required due date and it is still presumed that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to a monetary claim that this claim and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for July 2009	\$180.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$230.00

I hereby order that the Tenant’s 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 Respondent Tenant 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 \$230.00. The order must be served on the respondent Tenant 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 05, 2009.

Dispute Resolution Officer