

## **DECISION**

Dispute Codes      OPR MNR MNSD 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 in partial satisfaction of the claim, 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 22, 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 27, 2009, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*.

The Landlord also served each Tenant with the Notice of Direct Request Proceeding in person at the rental unit on July 30, 2009 at 9:30 p.m.

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; to keep all or part of the security deposit; 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 February 3, 2009 for a fixed term tenancy beginning February 1, 2009 and ending March 31, 2009. As the Tenants did not move out of the rental unit at the end of the fixed term tenancy the agreement switched over to a month to month tenancy. Monthly rent of \$1,400.00 is due on 1st of the month and a security deposit of \$700.00 and a pet deposit of \$350.00 was paid on or before January 31, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 14, 2009 with an effective vacancy date of July 23, 2009 due to \$1,400.00 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 served to the Mother of the Tenants, who has been residing at the rental unit, on July 14, 2009 at 7:00 p.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 14, 2009 and the effective date of the notice is July 24, 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.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenants' security and pet deposits, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for July 2009	\$1,40000
Filing fee	<u>50.00</u>
Sub total (Monetary Order in favor of the landlord)	<b>\$1,450.00</b>
LESS the Security Deposit of \$1,050.00 plus interest from January 31,2009 to August 7, 2009 of \$0.00	-1,050.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$400.00</b>

The Landlord has applied for loss of rent for August 2009 on their application which was filed on July 22, 2009. As the August loss of rent had not yet occurred at the time the Landlord filed their application I find that a claim for loss of rent does not meet the requirements to be determined through the direct request process. I hereby dismiss the Landlords' claim for loss of rent for August 2009, 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 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 \$400.00. 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 07, 2009.

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Dispute Resolution Officer