



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DIRECT REQUEST DECISION**

### Dispute Codes

OPR, MNR, MNSD, FF

### Introduction

The 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 and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 26, 2009, the landlord served the tenant with the Notice of Direct Request Proceeding. The applicant provided a receipt to confirm service by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served in 5 days when sent by registered mail. Based on the written submissions of the landlord, I find the tenant has been duly 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 rental arrears, to retain the security deposit from the tenant and reimbursement for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (the Act)*. I have reviewed all documentary evidence.

### Proof of Service of 10 Day Notice to End Tenancy

The landlord submitted a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent and a "Proof of Service" form stating that the Ten-Day Notice, was served in person to the tenant at 2:58 p.m. on August 11, 2009.

The purpose of serving documents under the *Act* is to notify the person being served of their failure to comply with the Act and of their rights under the Act in response. The landlord, seeking to end the tenancy due to this breach has the burden of proving that the tenant was served with the 10 day Notice to End Tenancy and I find that the landlord has met this burden.

### Analysis

Submitted into evidence was a copy of the tenancy agreement signed on January 30, 2009 showing rent set at \$775.00 per month and security deposit of \$387.50. No copy of the tenant's rent account ledger was submitted. However in the Application of Direct Request, the landlord stated that the tenant was in arrears of \$775.00 rent for the month of August, \$90.00 still outstanding for July 2009 and \$25.00 late fee for July 2009. Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

The landlord has requested a monetary claim in this application for the sum of \$890.00 which is further described on the Application for Dispute Resolution to consist of unpaid rent of \$865.00 in arrears plus late fees of \$25.00.

In regards to the \$25.00 claim for late fees I find that this cannot be awarded under section 55(4) of the Act which only applies to an Order of Possession and rent owed, does not permit a monetary order for other kinds of damages or debts such as late fees or bank fees owed under the tenancy agreement. Therefore, I find I must dismiss this portion of the landlord's application without leave.

I find that the landlord has established a total monetary claim of \$915.00 comprised of \$865.00 rental arrears for July and August 2009 and the \$50.00 fee paid by the landlord for this application. Pursuant to my authority under section 72(2)(b), I order that the landlord retain the security deposit and interest of \$387.50 in partial satisfaction of the claim leaving a balance due of \$527.50.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I hereby grant the Landlord an order under section 67 for \$527.50. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

September 2009

Date of Decision

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Dispute Resolution Officer