

## **DECISION**

### Dispute Codes

OPR, MNR, FF

### Introduction

This matter proceeded by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the "Act"), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on August 12, 2009, the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act determines that a document is deemed to have been served five days after mailing.

Based on the written submissions of the landlord, I find that the tenant has been duly served with the 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 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 parties on June 22, 2009, indicating a monthly rent of \$590.00 due on the first day of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 2, 2009 with a stated effective vacancy date of August 11, 2009, for \$590.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by

posting on the door on August 2, 2009. The Act deems the tenant was served on August 15, 2009.

The Notice states that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days from the date of service.

### Analysis

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 August 5, 2009.

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. Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent, and the application fee cost.

I note the landlord applied for \$90.00 for unpaid rent for July of 2009, however, there was insufficient evidence that the Tenant had been served with a Notice to End Tenancy indicating a portion of July rent was still owed. This portion of the claim is dismissed with leave to reapply.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord is entitled to an Order for monetary compensation pursuant section 67 in the amount of **\$640.00** comprised of \$590.00 rent owed and the \$50.00 fee paid for this application. This Order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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: September 23, 2009.

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Dispute Resolution Officer