



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This matter was conducted 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, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 9, 2009 the landlord served each tenant named on the Application for Dispute Resolution with the Notice of Direct Request Proceeding via personal delivery at the rental unit at 2:20 p.m. Section 90 of the Act determines that a document is deemed to have been served at the time it is personally delivered.

Based on the written submissions of the landlord, I find that the tenants have been 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; 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, 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 each tenant;
- A copy of a residential tenancy agreement which names only the female tenant who signed the tenancy agreement on January 15, 2009, indicating a monthly



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rent of \$1,150.00 due by the first day of the month and that a deposit of \$575.00 was paid on January 16, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 3, 2009 with a stated effective vacancy date of September 13, 2009, for \$1,150.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on September 3, 2009 at 1:00 p.m. at the rental unit. The Act deems the tenant was served on the day of personal delivery; September 3, 2009.

The Notice states that the tenant had five days to pay the rent 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

Only the female tenant has signed the tenancy agreement; therefore the monetary claim for compensation and an Order of possession is accepted against the female tenant only.

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 September 3, 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; September 13, 2009.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent, and the application fee cost. The Order of possession is effective against the tenant and any other guest or occupant of the rental unit.



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Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and occupant 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 monetary compensation pursuant section 67 in the amount of **\$1,200.00** comprised of \$1,150.00 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$575.00 in partial satisfaction of the claim and grant an Order for the balance due of **\$625.00**. 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 14, 2009.

Dispute Resolution Officer