

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 September 9, 2009 at 6:35 p.m. the Landlord served each Tenant in person at the rental unit. Based on the written submissions of the Landlord, I find that the Tenants have 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 each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on August 29, 2008 for a fixed term tenancy beginning September 1, 2008 and set

to expire on August 31, 2009 at which time the tenancy would continue on a month to month basis, for the monthly rent of \$1,500.00 due on 1st of the month and a deposit of \$750.00 was paid sometime in 2007; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 2, 2009 with an effective vacancy date of September 12, 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 personally to the female Tenant on September 2, 2009 at 9:28 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 September 2, 2009 and the effective date of the notice is September 12, 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 and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for September 2009	\$1,400.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,450.00

I hereby order that the Tenants' 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 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 \$1,450.00. 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: September 14, 2009.

Dispute Resolution Officer