

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, 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 10, 2009 at 1:30 p.m. the Landlord served the Tenant in person at the rental unit with the Notice of Direct Request Proceeding. 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 cost of the filing fee, 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 the Tenant;
- A copy of a residential tenancy agreement which was signed by the Tenant and the Landlord for a fixed term tenancy beginning on May 1, 2002 and set to expire on April 30, 2003 at which time it switched to a month to month tenancy for the

monthly rent of \$2,200.00 due in advance of the 1st of the month. A deposit of \$1,100.00 was paid on or before May 1, 2002.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 29, 2009, with an effective vacancy date of September 8, 2009 due to \$13, 200.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when the Landlord left it personally with the Tenant on August 29, 2009 at 5:00 p.m. in the presence of a witness.

Analysis

Order of Possession - 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 29, 2009 and the effective date of the notice is September 3, 2009 pursuant to section 90 of the *Act*. 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.

Monetary Claim – The Landlord has filed through the Direct Request Proceeding and is claiming for six months of unpaid rent for a total of \$13, 200.00. I find that by waiting six months before filing a monetary claim and then submitting such a claim without attending a participatory hearing does not fit the criteria of a direct request proceeding.

Based on the foregoing, I find that a conference call hearing is required in order to determine the details of the Landlord's monetary claim. Notices of Reconvened Hearing are enclosed with this decision for the Applicant Landlord and Respondent Tenant.

Filing fee - \$50.00 - I find that the Landlord has succeeded in large and that he should recover the filing fee from the Tenant.

Monetary Order – I find that the Landlord is entitled to recover the filing fee from the Tenant and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest.

Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$50.00
Less Security Deposit of \$1,100.00 (Note: Interest to be calculated on the balance of the security deposit at the time it is administered)	-1,100.00
Balance of Security Deposit	\$1,050.00

The balance of the Tenant's 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 Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord's monetary claim is to be reviewed at the participatory hearing noted on the enclosed Notice of Reconvened Hearing.

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