

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 Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 19, 2009 at 2:30 p.m. the Landlord served each Tenant with the Notice of Direct Request Proceeding in person, at the rental unit. Based on the written submissions of the Landlord, I find that each 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 each Tenant;
- A copy of a residential tenancy agreement which was signed by the parties on November 23, 2006 for a fixed term tenancy that switched to a month to month tenancy after November 30, 2007 for the monthly rent of \$875.00 due on 1st of the month. The Tenancy agreement lists that a deposit of \$437.50 was paid on or before November 23, 2006; and

- A copy of the notice of rent increase which lists the new rent at \$900.00 per month effective June 1, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 2, 2009 with an effective vacancy date of October 12, 2009 due to \$900.00 and \$675.00 in unpaid rent; and
- A receipt dated October 16, 2009 for payment received in the amount of \$285.00 for use and occupancy only.

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 posted to the Tenants' door on October 2, 2009 at 2:00 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 October 5, 2009, three days after it was posted to the Tenants' door, and the effective date of the notice is October 15, 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 Claim – I find that the Landlord has listed \$615.00 for unpaid rent on their application for dispute resolution, the 10 Day Notice to End Tenancy issued October 2, 2009 initially listed \$615.00 for the outstanding amount and above that amount \$900.00 was written, however the receipt of payment for \$285.00 was not dated until October 16, 2009. I find that the Landlord providing conflicting information as how could a notice to end tenancy be issued for \$615.00 on October 2, 2009 when the \$285.00 payment was not received until fourteen days later, on October 16, 2009. Based on the aforementioned contradictory information, I find that the Landlord's monetary claim does

not meet the criteria to be reviewed through a direct request process and hereby dismiss the Landlord's monetary claim with leave to reapply.

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

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

Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$50.00
Less Security Deposit of \$437.50 plus interest of \$13.46 (November 23, 2006 to November 2, 2009)	-450.96
Balance of Tenants' Security Deposit and Interest	\$400.96

The balance of 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 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.

I HEREBY DISMISS the Landlord's monetary claim, with leave to reapply.

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: November 02, 2009.

Dispute Resolution Officer