

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 November 17, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding in person with each Tenant. The Proof of Service of the Notice of Direct Request Proceeding displays each Tenant's signature as proof of receipt. 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; 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 all parties on February 7, 2004 for a fixed term tenancy beginning on March 1, 2004 and switching to a month to month tenancy after February 28, 2005 for the monthly rent of \$725.00 due on 1st of the month. A deposit of \$362.50 was paid on or before February 12, 2004.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 2, 2009 with an effective vacancy date of November 12, 2009 due to \$844.00 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 it was served personally to the male Tenant on November 2, 2009 at 7:30 p.m. The Tenant signed the proof of service form to confirm receipt of the notice. Service of the 10 Day Notice to End Tenancy was witnessed as noted on the proof of service form.

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 November 2, 2009 and the effective date of the notice is November 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 Claim – I find that the Landlord has listed \$844.00 for unpaid rent on his application for dispute resolution and the 10 Day Notice to End Tenancy however the tenancy agreement lists rent payable in the amount of \$725.00 and there is no evidence on file to substantiate why the Landlord is claiming \$844.00 for unpaid rent for the month of November 2009, an amount that is \$119.00 higher than the rent payable on the tenancy agreement. 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 he 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 as follows:

Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$50.00
Less Security Deposit of \$362.50 plus interest of \$12.83 (February 12, 2004 to December 1, 2009)	-375.33
Balance of Security Deposit and Interest	\$325.33

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 Tenants**. This order must be served on the Tenants 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: December 01, 2009.

Dispute Resolution Officer