

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 December 3, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. 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; 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 the Tenant;
- A copy of a residential tenancy agreement which was signed by the Tenant on November 2, 2006 for a month to month tenancy beginning November 1, 2006 for the monthly rent of \$800.00 due on 1st of the month and a deposit of \$400.00 was paid on or before November 6, 2006; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, November 13, 2009 with an effective vacancy date of November 23, 2009 due to \$2,400.00 in unpaid rent; and

- A notation that the property was previously managed by a different property management company on behalf of the Landlord.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the Tenant's door on November 13, 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 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 November 16, 2009, three days after it was posted to the door, and the effective date of the notice is November 26, 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 Order – I find that the Landlord is entitled to a monetary claim and the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for September, October, and November 2009 (3 x \$800)	\$2,400.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$2,450.00

As the Landlord has not applied to retain the security deposit and interest, I hereby order that the Tenant's security deposit of \$400.00 plus interest, currently held in trust by the Landlord, 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 Respondent Tenant 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 \$2,450.00. The order must be served on the respondent Tenant 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: December 17, 2009.

Dispute Resolution Officer