

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This matter was conducted 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 and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 4, 2009 the landlord served the male tenant with the Notice of Direct Request Proceeding in person. The landlord further declares that he served the female tenant via Registered Mail on December 7, 2009. Section 90 of the Act deems notices sent via mail received on the fifth day after mailing

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 filing fee from the tenants for the cost of the Application for Dispute Resolution, 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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on July 31, 2009 for a month to month tenancy beginning August 1, 2009 for the monthly rent of \$1250.00 due on the 1st of the month and a security deposit of \$625.00 paid on July 31, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on November 6, 2009 with an effective vacancy date of November 16, 2009 due to \$1250.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the rent owed for the month of November 2009 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally on November 6, 2009 at 6:00 p.m. The male tenant acknowledged in writing receipt of the notice.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

Analysis

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 tenant on November 6, 2009, and the effective date of the notice is November 16, 2009. 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 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.

Conclusion

I 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 find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$1300.00** comprised of \$1250.00 rent owed and the \$50.00 fee paid by the Landlord for this application. I order that the landlord may retain the deposit and interest held of \$625.00 in partial satisfaction of the claim and grant an order for the balance due of **\$675.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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 21, 2009.

Dispute Resolution Officer