

## **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 in partial satisfaction of the claim, 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 December 12, 2009 at 6:30 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 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 each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on August 5, 2009 for a fixed term tenancy beginning August 15, 2009, and switching over to a month to month tenancy after September 1, 2010 for the monthly rent of \$1,950.00 due on 1st of the month and a deposit of \$1,000.00 was to be deposited into the Landlord's bank account at a later date; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 3, 2009 with an effective vacancy date of December 13, 2009 due to \$1,950.00 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 left personally with the female Tenant on December 03, 2009 at 6:00 p.m. in the presence of a witness.

The Landlord noted on his application for dispute resolution that the security deposit paid was \$975.00 however the Landlord does not list the actual date when the security deposit was paid.

### 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 December 3, 2009, and the effective date of the notice is December 13, 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 Order** – The Landlord has provided information on his application for dispute resolution to clarify that the amount of security deposit paid by the Tenants was \$975.00 and not \$1,000.00 as noted on the tenancy agreement. In the absence of clarification of the actual date the security deposit was paid, I will consider the amount to have been paid on August 6, 2009, as noted on the tenancy agreement under the section on security deposit.

I find that the Landlord is entitled to a monetary claim that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for December 2009	\$1,950.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	<b>\$2,000.00</b>
LESS the Security Deposit of \$975.00 plus interest from August 6, 2009 to December 30, 2009 of \$0.00	-975.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,025.00</b>

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 Respondent Tenants 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 \$1,025.00. The order must be served on the respondent Tenants 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 30, 2009.

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Dispute Resolution Officer