

## **DECISION**

Dispute Codes      OPR MNRMNSD 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 Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 18, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipt numbers were provided in the Landlord's documentary evidence. The Tenant is deemed to have been served the Direct Request Proceeding documents on December 23, 2009, the fifth day after they were mailed pursuant section 90 of the *Residential Tenancy Act*. 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; 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 the Tenant;
- A copy of a residential tenancy agreement which was signed by the Tenant and the Landlord on September 25, 2007 for a fixed term tenancy effective October 1, 2007 and switching over to a month to month tenancy after September 30, 2008 for the monthly rent of \$1,050.00 due on 1st of the month. The Tenant paid a deposit of \$525.00 on September 25, 2007.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 2, 2009 with an effective vacancy date of December 12, 2009 due to \$1206.00 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 posted on the Tenant's door on December 2, 2009 at 5:15 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 December 5, 2009, three days after it was posted to the Tenant's door, and the effective date of the notice is December 15, 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 and I approve the Landlord's claim for an Order of Possession.

**Monetary Claim** – I find that the Landlord has listed \$1,206.00 for unpaid rent and late fees on his application for dispute resolution, the 10 Day Notice to End Tenancy shows \$1,206.00 listed as unpaid rent, and the evidence supplied by the Landlord shows a tenant ledger where there are charges for parking, late fees, and rent included in a total of \$1,206.00. The Landlord did not provide evidence to substantiate why the rent listed on the tenant ledger and the Landlord's claim shows \$1,088.00 per month while the tenancy agreement displays the rent as being \$1,050.00 per month.

In the presence of the aforementioned contradictory information pertaining to the amount of the monthly rent, I find that the Landlord's monetary claim does not meet the criteria to be reviewed through a direct request process and I hereby dismiss the Landlord's monetary claim with leave to reapply.

Parking and late fees are not unpaid rent and do not meet the criteria to be reviewed through the direct request process.

**Filing fee - \$50.00.** I find that the Landlord has partially succeeded with their claim and are entitled to recover the filing fee from the Tenant.

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

Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	<b>\$50.00</b>
Less Security Deposit of \$525.00 plus interest of \$10.02 (September 25, 2007 to January 7, 2010)	-535.02
<b>Balance of Security Deposit and Interest</b>	<b>\$485.02</b>

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: January 07, 2010.

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Dispute Resolution Officer