

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 for unpaid rent, a Monetary Order for unpaid rent, 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 31, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at the rental unit and the Tenant signed to acknowledge receipt of the package. 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 July 26, 2007 for a fixed term tenancy beginning on August 1, 2007 and switching to a month to month tenancy after July 31, 2008 for the monthly rent of \$640.00 due on 1st of the month. A deposit of \$320.00 was paid in cash on July 26, 2007; and

- A Tenant ledger showing base rent charged in the amounts of \$662.00 and 685.00 and late payment fees of \$20.00 adding to the total amount outstanding of \$1,906.50; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 18, 2009 with an effective vacancy date of December 28, 2009 due to \$1,906.50 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 Tenant on December 18, 2009 at 6:30 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 18, 2009 and the effective date of the notice is December 28, 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 with in 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 hereby approve the Landlord's request for an Order of Possession.

Monetary Claim – I find that the Landlord has listed \$1,906.50 for unpaid rent for October, November, and December 2009, on his application for dispute resolution. The Tenancy agreement shows rent payable in the amount of \$640.00 per month and three months would total \$1,920.00. I note that the tenant ledger supplied in the evidence shows two different amounts charged for rent of \$662.00 and \$685.00 which are different than the \$640.00 listed on the tenancy agreement and there is no evidence before me to support a rent increase. 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 I hereby dismiss the Landlord's monetary claim with leave to reapply.

Filing fee - \$50.00. I find that the Landlord has partially succeeded with their application and that they are entitled to recover the filing fee.

The Tenant's security deposit currently held in trust by the Landlord 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.

A copy of the Landlords' decision will be accompanied by a Monetary Order for \$50.00 as recovery of the filing fee. 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: January 15, 2010.

Dispute Resolution Officer