

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 31, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail on December 31, 2009. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenants are deemed to be served the hearing documents on January 5, 2010, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*. 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 both parties on November 7, 2009 for a fixed term tenancy beginning on November 16, 2009 a switching to a month to month tenancy after November 30, 2010 for the monthly rent of \$900.00.00 due on 1st of the month and a deposit of \$450.00 was paid on November 7, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 15, 2009 with an effective vacancy date of December 24, 2009 due to \$975.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was left personally with the male Tenant on December 15, 2009 at 1:48 p.m. in the presence of a witness.

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 15, 2009 and the effective date of the notice is December 25, 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 with in 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 and I hereby approve the Landlord's request for an Order of Possession.

The 10 Day Notice to End Tenancy was issued listing “You have failed to pay rent in the amount of \$975.00.” I note that the monthly rent payable is \$900.00 and that the 10 Day Notice to End Tenancy should have been issued with the amount of \$900.00 and not \$975.00 as the rent which was not paid on December 1, 2009 was \$900.00. The evidence provided by the Landlord supports that the difference of \$75.00 was the Landlord’s charge for a Late Payment Fee and for parking. The late payment fee and parking charges are not considered rent.

Late Payment Fee and Parking Charges – The Direct Request Proceeding is convened under Section 55(4) of the *Residential Tenancy Act* which stipulates that the director may grant an Order of Possession and a Monetary Order in relation to the non-payment of rent without holding a hearing. I find that late payment fees and parking fees do not fall under “non-payment” of rent and they cannot be considered in a direct request proceeding. Based on the aforementioned I hereby dismiss the Landlord’s claim of \$50.00 for late payment fees and \$25.00 for parking fees, without leave to reapply.

Monetary Order – 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	\$900.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$950.00
Less Security Deposit of \$450.00 plus interest of \$0.00	- 450.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$500.00

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 \$500.00. The order must be served on the respondent 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