

## **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 Landlords for an Order of Possession, a Monetary Order, and to recover the cost of the filing fee from the Tenants for this application.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on December 31, 2009 at 9:00 p.m. the Landlord served the male Tenant with the Notice of Direct Request Proceeding, in person at the rental unit. Based on the written submissions of the Landlords, I find that the male Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlords have applied for a monetary Order which requires that the Landlords serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one of the two Tenants has been personally served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the male Tenant who has been properly served with Notice of this Proceeding. As the second Tenant, (the Female Tenant) has not been properly served the Application for Dispute Resolution as required the monetary claim against the female Tenant is dismissed without leave to reapply.

The Landlords have requested an Order of possession against both Tenants. Section 89(2) of the Act determines that the Landlords may leave a copy of the Application for Dispute Resolution related to a request for an Order of possession at the Tenants' residence with an adult who apparently resides with the Tenant. As both Tenants are signatories to the tenancy agreement I have determined that both parties have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

### Issue(s) to be Decided

The issues to be decided are whether the Landlords are entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; to keep 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 male Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on July 23, 2009 for a fixed term tenancy beginning on July 23, 2009 and ending on August 31, 2010 for the monthly rent of \$675.00 due on 1st of the month and a deposit of \$500.00 was paid on July 24, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 14, 2009 with an effective vacancy date of December 24, 2009 due to \$675.00 in unpaid rent.

Documentary evidence filed by the Landlords indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the male Tenant on December 14, 2009 at 7:00 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 Landlords. The notice is deemed to have been received by the Tenants on December 14, 2009 and the effective date of the notice is December 24, 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 and I hereby approve the Landlords' request for an Order of Possession.

I note that the Landlords collected a security deposit in an amount that contravenes section 19 (1) of the *Act* which provides that a landlord must not required or accept a security deposit that is greater than the equivalent of ½ of one month's rent payable under the tenancy agreement. In this case the Landlords should have required a security deposit not more than \$337.50.

Section 19 (2) of the Act provides that if a Landlord accepts a security deposit that is greater than the amount permitted under section 19 (1) of the Act, the tenant may deduct the overpayment from rent. In the presence of this claim the full amount of this security deposit will be off set against the Landlord's monetary claim as listed below.

**Monetary Order** – I find that the Landlords are entitled to a monetary claim against the male Tenant, 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 Tenant as follows:

Unpaid Rent for December 2009	\$675.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$725.00</b>
LESS the Security Deposit of \$500.00 plus interest from July 24, 2009 to January 15, 2010 of \$0.00	-500.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORDS</b>	<b>\$225.00</b>

### Conclusion

I HEREBY FIND that the Landlords are 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 Landlords' monetary claim against the male Tenant. A copy of the Landlords' decision will be accompanied by a Monetary Order for \$225.00. The order must be served on the respondent male 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.

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Dispute Resolution Officer