

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 Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 6, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at 8:00 p.m. in the presence of a witness. 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 filing fee from the Tenant 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 Tenant;

- A copy of a residential tenancy agreement which was signed by all parties on July 27, 2009 for a month to month tenancy beginning August 1, 2009 for the monthly rent of \$1,100.00 due on 1st of the month and a deposit of \$350.00 was paid on July 27, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 20, 2009 with an effective vacancy date of January 31, 2010 due to \$2,200.00 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 with the Tenant, in person, on December 20, 2009 at 8:20 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 20, 2009, and the effective date of the notice is December 30, 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*.

I note that the Landlord has written on the 10 Day Notice to End Tenancy an effective date of January 31, 2010 and that this date was automatically corrected to December 30, 2009 in accordance with section 53 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 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 Tenant's

security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for November 2009 and December 2009 at \$1,100.00 per month	\$2,200.00
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	\$2,250.00
LESS the Security Deposit of \$350.00 plus \$0.00 interest from July 27, 2009 to January 18, 2010	-350.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,900.00

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 Respondent Tenant 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 \$1,900.00. 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 18, 2010.

Dispute Resolution Officer