

## **DECISION**

Dispute Codes      OPR MNR 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 Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 7, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at the rental unit at 16:20 hrs. Based on the written submissions of the Landlords, 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 Landlords are entitled to an Order of Possession for unpaid rent; to a Monetary Order for unpaid rent; and to recover the filing fee from the Tenant for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Landlords 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 November 18, 2009 for a month to month tenancy beginning November 18, 2009

for the monthly rent of \$650.00 due on 1st of the month and a deposit of \$325.00 was paid on November 18, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, December 3, 2009 with an effective vacancy date of December 18, 2009 due to \$210.00 in unpaid rent; and
- Copies of receipts issued by the Landlord on November 18, 2009 for receipt of \$440.00 towards December 2009 rent and \$260.00 for payment of November 2009 rent; and
- Copies of Canada Post receipts from December 3, 2009.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on December 3, 2009. Copies of registered mail receipts were submitted in the Landlords' evidence.

### 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 Landlords. The notice is deemed to have been received by the Tenants on December 8, 2009, five days after they were mailed, and the effective date of the notice is December 18, 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 hereby approve the Landlords' request for an Order of Possession.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent which was due December 1, 2009	\$210.00
Filing fee	<u>50.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$260.00</b>

I hereby order that the Tenant's security deposit of \$325.00, currently held in trust by the Landlords, to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

#### Conclusion

I HEREBY FIND that the Landlords are 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 Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for \$260.00. 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.

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Dispute Resolution Officer