

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 for unpaid rent, 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 Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 06, 2010 the Landlords served the Tenant with the Notice of Direct Request Proceeding via registered mail (two days after the hearing documents were created). Canada Post Receipt numbers were submitted in the Landlords' documentary evidence. The Tenant is deemed to be served the hearing documents on July 22, 2009, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*. 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; 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 December 16, 2008 for a fixed term tenancy beginning February 1, 2009 and switching over to a month to month tenancy after January 31, 2010 for the monthly rent of \$1,775.00 due on 1st of the month and a deposit of \$880.00 was paid on December 16, 2008; 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 \$1,775.00 in unpaid rent.

Documentary evidence filed by the Landlords indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was placed in the Tenant's mail box/slot on December 18, 2009 at 5:30 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 Landlords. The notice is deemed to have been received by the Tenant on December 21, 2009, three days after it was placed in the Tenant's mail box/slot, and the effective date of the notice is December 31, 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 Landlords are 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 Landlords are entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for December 2009	\$1,775.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,825.00
LESS the Security Deposit of \$880.00 plus interest of \$0.58 from December 16, 2008 to January 18, 2010	-880.58
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$944.42

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 \$944.42. 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