

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 5, 2010 the Landlords served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlords' documentary evidence. The Tenant is deemed to be served the hearing documents on January 10, 2010, 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 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 June 7, 2009 for a month to month tenancy beginning on June 15, 2009 for the monthly rent of \$825.00 due on 1st of the month and a deposit of \$412.50 was paid on June 15, 2009; and
- A copy of a receipt for a \$100.00 payment made by the Tenant and received by the Landlords for use and occupancy only; 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, 2009 due to \$1,365.00 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 served personally to the Tenant on December 18, 2009 at 8:00 p.m. The Tenant signed the proof of service form acknowledging receipt of the 10 Day Notice.

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 18, 2009, and the effective date of the notice is December 28, 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 Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent of \$640.00 for November 2009 plus \$825.00 for December 2009 less \$100.00 payment made on December 1, 2009.	\$1,365.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,415.00
LESS the Security Deposit of \$412.50 plus interest of \$0.00	-412.50
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,002.50

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 \$1,002.50. 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