

## **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 for unpaid rent, to keep the security and/or pet deposit, 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 8, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at the rental unit at 7:45 p.m. 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 the security and/or pet 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 August 15, 2009 for a month to month tenancy beginning August 15, 2009 for the monthly rent of \$1,050.00 due on 31st of the month. The tenancy agreement lists

a security deposit of \$525.00 been paid on August 15, 2009 and a pet deposit of \$300.00 being paid on October 14, 2009.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 2, 2010, with an effective vacancy date of January 10, 2010 due to \$1,050.00 in unpaid rent due January 1 2010 and a balance owed of \$100.00 from December 2009; and
- A notation on the Landlord's application for dispute resolution which states that the Tenant did not pay the security deposit of \$525.00 as listed on the tenancy agreement.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it personally with the Tenant on January 2, 2010 at 2:30 p.m. The Tenant initialed the Landlord's copy of the proof of service form to acknowledge 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 Landlord. The notice is deemed to have been received by the Tenant on January 2, 2010, and the effective date of the notice is January 12, 2010, 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 Landlord's 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 of \$100.00 for December 2009 and \$1,050.00 for January 2010	\$1,150.00
Filing fee	<u>50.00</u>
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$1,200.00</b>

The Landlord has applied to keep the security and pet deposit. The Landlord noted on their application for dispute resolution that the Tenant has failed to pay the security deposit of \$525.00, as listed on the tenancy agreement, however the Landlord does not confirm if the pet deposit was paid and if so when. As the information pertaining to when or if the security and pet deposit were actually paid is unclear I decline to approve the Landlord's request to retain the security and/or pet deposit.

Based on the aforementioned, I hereby order that the Tenant's security and or pet deposits, if previously paid to the Landlord and currently held in trust by the Landlord, is to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

### 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 \$1,200.00. 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 19, 2010.

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Dispute Resolution Officer