

## **DECISION**

Dispute Codes - OPR, MNR

### Introduction

This matter was conducted 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 and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 14, 2010 the landlord served the tenants with the Notice of Direct Request Proceeding personally.

Based on the written submissions of the landlord, I find that the tenants have 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, pursuant to sections 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 tenants;
- A copy of an amended residential tenancy agreement which was signed by the parties on August 14, 2009 for bi-weekly for the bi-weekly rent of \$438.00 due on the Friday of each two week period and a security deposit of \$475.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on January 4, 2010 with an effective vacancy date of January 14, 2010 due to \$438.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the full rent owed for the two week period from January 1, 2009 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served

personally on January 4, 2009 at 7:10 p.m. The landlord has provided confirmation this service was witnessed by a third party.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord submitted additional documentation stating the tenants paid \$200.00 on January 5, 2010 and the remaining \$238.00 on January 15, 2010. The landlord also states the tenants have not paid the rent that was due on January 15, 2009. The tenants did not apply to dispute the Notice to End Tenancy within five days.

### Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenants on January 4, 2010, and the effective date of the notice is January 14, 2010. I accept the evidence before me that the tenants 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 tenants are conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

### Conclusion

I 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 tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$438.00** comprised of rent owed.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced 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 22, 2010.

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Dispute Resolution Officer