

## **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, 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 Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 19, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding, personally at the rental unit. 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 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

I have carefully reviewed the following documentary evidence submitted by the Landlord:

- 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 September 9, 2005 for a month to month tenancy effective September 9, 2005 for the monthly rent of \$650.00 due on 1st of the month and a deposit of \$325.00 was paid on September 9, 2005; and
- A copy of a notice of rent increase showing the new monthly rent of \$699.98 payable as of June 1, 2008; and
- A notation listing the outstanding rent of \$1,079.94 being comprised of \$379.96 unpaid rent from December 2009 and \$699.98 of unpaid rent from January 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 6, 2010 with an effective vacancy date of January 16, 2010 due to \$1,079.94.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the Tenant's door on January 6, 2010 at 6:00 p.m. in the presence of a witness.

### Analysis

**Order of Possession** – Upon review of the evidence I 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 9, 2010, three days after it was posted to the Tenant's door, and the effective date of the notice is January 19, 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 award the Landlord an Order of Possession.

**Monetary Order** – I find that the Landlord is 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 for December 2009 \$379.96 and January 2010 \$699.98	\$1,079.94
Filing fee	<u>50.00</u>
Subtotal (Monetary Order in favor of the landlord)	<b>\$1,129.94</b>
LESS the Security Deposit of \$325.00 plus interest from September 9, 2004 to January 26, 2010 of \$11.51	-336.51
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$793.43</b>

### 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 **\$793.43**. 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 26, 2010.

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Dispute Resolution Officer