

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, an Order to retain the security and pet deposits in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 21, 2010 the Landlord served each Tenant with the Notice of Direct Request Proceeding, via registered mail. Canada Post receipts were provided in the Landlord's evidence. The Tenants are deemed to have received the hearing packages on January 26, 2010, five days after they were mailed, in accordance with section 90 of the Act. 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; to keep all or part of the security and pet deposits; and to recover the filing fee from the Tenants 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 each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on October 2, 2009 for a fixed term tenancy beginning on October 1, 2009, and set to expire on September 30, 2010. for the monthly rent of \$850.00 due on 1st of the month and a security deposit of \$425.00 was paid on November 1, 2009 and a pet deposit was paid on October 1, 2009; and
- A copy of a cheque issued by the male Tenant for January 2010 rent that was returned by the bank and stamped “payment stopped”; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 14, 2010 with an effective vacancy date of January 24, 2010 due to \$850.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the female Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent in persona on January 14, 2010, at 1:00 p.m. in the presence of a witness.

Analysis

Order of Possession – Upon review of the evidence I accept that the Tenants have been served with notice to end tenancy as declared by the Landlord. The notice was received by the Tenants on January 14, 2010 and the effective date of the notice is January 24, 2010 pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have 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 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 Tenants' pet and security deposits, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for January 2010	\$850.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$900.00
LESS the Security Deposit of \$425.00 plus Pet Deposit of \$425.00 plus interest of \$0.00	-850.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$50.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondent Tenants 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 **\$50.00**. The order must be served on the respondent Tenants 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 29, 2010.

Dispute Resolution Officer