

## **DECISION**

Dispute Codes - OPR, MNR, MNSD, FF

### Introduction

This hearing 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 had originally requested a Direct Request Proceeding, however, the Dispute Resolution Officer conducting that proceeding set it over to a participatory hearing as the landlord had failed to prove service of the notice to both tenants.

### 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; for all or part of the security deposit 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

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Reconvened Hearing for both of the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on August 6, 2009 for a 6 month fixed term tenancy beginning on August 6, 2009 for the monthly rent of \$695.00 due on the 1<sup>st</sup> of the month and a security deposit of \$347.50 was paid on August 6, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on December 2, 2009 with an effective vacancy date of December 12, 2009 due to \$602.50 unpaid rent.

Documentary and testimonial evidence filed by the landlord indicates that the tenants had failed to pay the full rent owed for the months of December, 2009 and January, 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served to the tenant personally on December 2, 2009 at 5:49 p.m. The landlord has provided written confirmation that the tenant signed a proof of service.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days. The landlord confirmed that the tenants have not paid any rent in January and the current arrears are \$1,207.50.

### 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 December 2, 2009, and the effective date of the notice is December 12, 2009. 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 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.

### 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 in the amount of **\$1,257.50** comprised of \$1,207.50 rent owed and the \$50.00 fee paid by the Landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$347.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$910.00**. 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 29, 2010.

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Dispute Resolution Officer