

DECISION

Dispute Codes OPR MND 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 deposit 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 19, 2010 the Landlord served the male Tenant with the Notice of Direct Request Proceeding, personally at the rental unit at 2:00 p.m. The proof of service document states that the female Tenant was served the Notice of Direct Request Proceeding via registered mail on January 20, 2010. Canada Post receipt numbers were submitted in the Landlord's evidence. The female Tenant is deemed to have received the hearing documents on January 25, 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 each 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 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 September 1, 2009 for a month to month tenancy effective September 1, 2009 for the monthly rent of \$1,100.00 due on 1st of the month and a deposit of \$550.00 was paid on September 1, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 7, 2010 with an effective vacancy date of January 17, 2010 due to \$2,200.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the Tenants' door on January 7, 2010 at 2:45 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 is deemed to have been received by the Tenants on January 10, 2010, three days after it was posted to the Tenants' door, and the effective date of the notice is January 20, 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' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for December 2009 \$1,100.00 and January 2010 \$1,100.00	\$2,200.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$2,250.00
LESS the Security Deposit of \$550.00 plus interest from September 1, 2009 to January 28, 2010 of \$0.00	-550.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,700.00

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 **\$1,700.00**. 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 28, 2010.

Dispute Resolution Officer