

## **DECISION**

Dispute Codes      OPR MNR 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 Landlords for an Order of Possession, a Monetary Order, and to recover the cost of the filing fee from the Tenant for this application.

The Landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 3, 2010 at 12:25 p.m. the male Landlord served the Tenant with the Notice of Direct Request Proceeding, personally at the rental unit. Based on the written submissions of the Landlords, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession for unpaid rent and to a Monetary Order for unpaid rent, pursuant to sections, 55, of the *Residential Tenancy Act (Act)*?

### Background and Evidence

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

- 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 25, 2009 for a month to month tenancy effective October 1, 2009 for the monthly rent of \$500.00 due on 1st of the month and an unknown amount of security deposit was previously paid, as noted on the tenancy agreement; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 13, 2010 with an effective vacancy date of January 28, 2010 due to \$500.00 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 via registered mail on January 13, 2010, Canada Post receipts were submitted in the documentary evidence.

### 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 Landlords. The notice is deemed to have been received by the Tenant on January 18, 2010, five days after it was mailed, and the effective date of the notice is January 28, 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 Landlords an Order of Possession.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for January 2010	\$500.00
Filing fee	50.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$550.00</b>

The Landlords have not applied to retain the security deposit and interest and I note that the date of when the security deposit was paid or the amount of the security deposit is not recorded on the tenancy agreement or in the Landlords' application. Therefore, I hereby order, if the Landlords are currently holding the Tenant's security deposit, that the Landlords administer the deposit in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY FIND that the Landlords are 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 Landlords' monetary claim. A copy of the Landlords' decision will be accompanied by a Monetary Order for **\$550.00**. 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: February 11, 2010.

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Dispute Resolution Officer