

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 Landlord for an Order of Possession for unpaid rent, a Monetary Order for unpaid rent, 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 29, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding, personally at the rental unit in the presence of the Police. 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

Is the Landlord is entitled to an Order of Possession for unpaid rent under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent under section 55(4) of the *Residential Tenancy 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 November 28, 2009 for a month to month tenancy effective December 1, 2009 for the monthly rent of \$650.00 due on 1st of the month.
- The Tenancy agreement lists that the tenant is required to pay a security deposit of \$325.00 on December 1, 2009 however the Landlord noted on his application that the Tenant failed to pay this security deposit; and
- A copy of two bank statements which show that a cheque was returned on December 07, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 4, 2010 with an effective vacancy date of January 4, 2010 due to \$650.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served a copy of the January 4, 2010, 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the Tenant's door on January 4, 2010 at 12:10 p.m. and another copy of the same notice was posted on January 30, 2010 at 12:40 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 7, 2010, and again on February 3, 2010, three days after they were posted to the Tenant's door and the effective date of the first notice is January 17, 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 aforementioned, 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.

Unpaid Rent – I note that the Landlord provided proof that a \$650.00 cheque was returned from the bank; however it does not specify that this cheque was drawn on the Tenant's account; and the Landlord's application was completed requesting only \$650.00 for unpaid rent.

The Landlord has filed his application for dispute resolution seeking \$650.00 for unpaid rent for January 2010 pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. Therefore I hereby approve the Landlord's claim for unpaid rent for January 2010 and allow the Landlord leave to reapply for any additional outstanding unpaid rent.

Filing Fee – The Landlord has been successful with his application, therefore I award the Landlord recovery of the \$50.00 filing fee.

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 January 2010	\$650.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$700.00

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 **\$700.00**. 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*.

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Dated: February 10, 2010.

Dispute Resolution Officer