

DECISION

Dispute Codes OPR MNR MNSD MNDC 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, an Order to retain the security deposit, for money owed or compensation for damage or loss under the Act, and to recover the cost of the filing fee from the Tenant.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail on January 29, 2010. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on February 3, 2010, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*. 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 entitled to an Order of Possession for unpaid rent under section 55 of the Act?

Is the Landlord entitled to a Monetary Order a) for unpaid rent, and b) an Order to retain the security deposit, and c) for money owed or compensation for damage or loss under the Act, under sections 38, 55, and 72 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 both parties on February 1, 2009 for a month to month tenancy beginning February 1, 2009 for the monthly rent of \$690.00 due on 1st of the month and a deposit of \$345.00 was paid on February 1, 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 14, 2010 due to \$690.00 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 when it was posted on the Tenant's door on January 4, 2010 at 6:00 p.m.

Analysis

Order of Possession - I have reviewed all documentary evidence and 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, (three days after it was posted on the door) and the effective date of the 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 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 approve the Landlord's request for an Order of Possession.

Late Payment Fee – The Direct Request Proceeding is convened under Section 55(4) of the *Residential Tenancy Act* which stipulates that the director may grant an Order of Possession and a Monetary Order in relation to the non-payment of rent without holding a hearing. I find that late payment fees do not fall under “non-payment” of rent and they cannot be considered in a direct request proceeding. Based on the aforementioned I hereby dismiss the Landlord's claim of \$25.00 for late payment fees, without leave to reapply.

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	\$690.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$740.00
Less Security Deposit of \$345.00 plus interest of \$0.00	-345.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$395.00

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 **\$395.00**. 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 19, 2010.

Dispute Resolution Officer