

## **DECISION**

Dispute Codes      OPR MNR 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 for unpaid rent, 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 Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 11, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipt numbers were submitted into evidence and the Tenant is deemed to have been served the hearing documents on February 16, 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 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 *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent; and b) to keep the security deposit under sections 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 all parties on July 31, 2009, for a fixed term tenancy effective August 1, 2009 and switching over to a month to month tenancy after July 31, 2010, for the monthly rent of \$840.00 due on 1st of the month and a deposit of \$420.00 was paid on July 31, 2009; and
- A copy of a notice of rent increase showing the new monthly rent of \$699.98 payable as of June 1, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 23, 2010 with an effective vacancy date of February 1, 2010 due to \$840.00 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 left with the Tenant, personally, on January 23, 2010 at 9:00 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 23, 2010, and the effective date of the notice is February 2, 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 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 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`	\$840.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	<b>\$890.00</b>
LESS the Security Deposit of \$420.00plus interest from July 31, 2009 to February 22, 2010 of \$0.00	-420.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$470.00</b>

### 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 **\$470.00**. 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 22, 2010.

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Dispute Resolution Officer