

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, to keep the security deposit, 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 February 12, 2010, at 6:40 p.m. the Landlord served the Tenants with the Notice of Direct Request Proceeding, via registered. A Canada Post receipt was submitted into evidence which confirms that one envelope was sent addressed to both Tenants. Based on the written submissions of the Landlord, I find that the Tenant whose name is listed first on the Canada Post receipt, the male Tenant, has been served with the Dispute Resolution Direct Request Proceeding documents.

Section 88(1) of the *Residential Tenancy Act* and Section 3.1 of the *Residential Tenancy Rules of Procedures* determines the method of service for documents. The Landlord has applied for a Monetary Order which requires that the Landlord serve **each** respondent as set out under *Residential Tenancy Rules of Procedures*. In this case only one package was sent to the two Tenants, so only one Tenant has been properly served with the Notice of Direct Request Proceeding document. Therefore, I find that the request for a monetary Order against both Tenants must be amended to include only the male Tenant who has been properly served with Notice of this Proceeding. As the second Tenant has not been properly served the Application for Dispute Resolution as required the monetary claim against the female Tenant is dismissed without leave to reapply.

The Landlord has requested an Order of possession against both Tenants. Section 89(2) of the Act determines that the Landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of possession at the Tenants' residence with an adult who apparently resides with the Tenant. As both Tenants are signatories to the tenancy agreement I have determined that both parties have been sufficiently served with the portion of the Application for Dispute Resolution relating to section 55 of the Act, requesting an order of possession.

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 section 55 and 72 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding; and
- A copy of a residential tenancy agreement which was signed by all parties on February 23, 2008, for a month to month tenancy beginning March 1, 2008 for the monthly rent of \$1,200.00 due on 1st of the month and a deposit of \$600.00 was paid on March 1, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 3, 2010 with an effective vacancy date of February 13, 2010 due to \$1,700.00 in unpaid rent.

Documentary evidence filed by the Landlords indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the male Tenant on February 3, 2010 at 8:45 p.m. in the presence of a witness.

Analysis

Order of Possession - I have reviewed all documentary evidence and 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 February 3, 2010 and the effective date of the notice is February 13, 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 approve the Landlord's request for 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 January 2010	\$500.00
Unpaid Rent for February 2010	1,200.00
Filing Fee	<u>50.00</u>
SUBTOTAL DUE TO THE LANDLORD	1,750.00
LESS: Security Deposit \$600.00 + Interest of \$7.52 from March 1, 2008 to February 22, 2010	<u>-607.52</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,142.48

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 **\$1,142.48**. The order must be served on the respondent male 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.

Dispute Resolution Officer