

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, late payment and NSF fees, an Order to retain the security deposit in partial satisfaction of the claim, and to the cost of the filing fee for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 17, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on February 22, 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 under section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order a) for unpaid rent; and b) late payment and NSF fees; and c) an Order to retain the security deposit in partial satisfaction of the claim under sections 55 and 72 of the *Residential Tenancy Act*?

Background and Evidence

I have carefully reviewed the documentary evidence submitted by the Landlord as follows:

- 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 March 31, 2008 for a fixed term tenancy beginning April 1, 2008 and switching to

a month to month tenancy after march 31, 2009, for the monthly rent of \$740.00 due on 1st of the month and a deposit of \$370.00 was paid on or before March 31, 2008; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 2, 2010 with an effective vacancy date of February 12, 2010 due to \$1,570.00 in unpaid rent; and
- A notation on the Landlord's application which states that the \$1,570.00 listed on the above mentioned 10 Day Notice is comprised of \$760.00 for January 2010 rent which was returned NSF, plus \$50.00 NSF fee, plus \$760.00 for February 2010 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 personally with the Tenant on February 2, 2010 at 6:00 p.m. in the presence of a witness.

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 February 2, 2010, and the effective date of the notice is February 12, 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 with in 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.

Unpaid Rent - The 10 Day Notice to End Tenancy was issued listing "You have failed to pay rent in the amount of \$1,570.00." I note that the monthly rent payable is \$740.00 based on the Tenancy agreement and there is no evidence to substantiate that rent is now payable in the amount of \$760.00. Based on the aforementioned contradictory information, I find that the Landlord's monetary claim does not meet the criteria to be reviewed through a direct request process and I hereby dismiss the Landlord's monetary claim with leave to reapply.

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 an Order in relation to the non-payment of rent without holding a

hearing. I find that late payment fees and NSF 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 and \$50.00 NSF fees, without leave to reapply.

Filing Fee – The Landlord has been partially successful with their claim and therefore I award recovery of the \$50.00 filing fee.

The Landlord is entitled to retain \$50.00 from the Tenant’s security deposit currently held in trust. The balance of the Tenant’s security deposit is to be administered in accordance with section 38 of the *Residential Tenancy Act*.

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.

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 26, 2010.

Dispute Resolution Officer