

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 February 16, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipt numbers were provided in the Landlord's documentary evidence. The Tenant is deemed to have been served the Direct Request Proceeding documents on February 21, 2010, the fifth day after they were mailed pursuant 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 *Residential Tenancy Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent under section 55 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 for the Tenant;
- A copy of a residential tenancy agreement which was signed by the Tenant and the Landlord on January 1, 2010 for a month to month tenancy beginning September 1, 2009 for the monthly rent of \$1,400.00 due on 1st of the month and the Tenant paid a security deposit of \$650.00 on September 1, 2009.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 4, 2010 with an effective vacancy date of February 14, 2010 due to \$3,290.00 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 to the Tenant's door on February 4, 2010 at 8:40 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 7, 2010, three days after it was posted to the Tenant's door, and the effective date of the notice is February 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 therefore I approve the Landlord's claim for an Order of Possession.

Monetary Claim – The Landlord has claimed \$3,290.00 of unpaid rent which the Landlord has noted is comprised of \$590.00 owing for December 2009, \$1,350.00 owing for January 2010, and \$1,350.00 owing for February 2010. A hand written note was put on the Landlord's application stating "rent decreased by \$50.00 on November 1, 2009", which could explain why the Landlord has stated that \$1,350.00 is outstanding for January and February 2010 rent, however it does not explain why the tenancy agreement which was entered into evidence and signed on January 1, 2010 list rent payable in the amount of \$1,400.00 and there is no indication on this newly signed tenancy agreement that rent was reduced to \$1,350.00 per month and the period that this rent reduction applies to.

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.

Filing fee - \$50.00. I find that the Landlord has partially succeeded with his application and I hereby award recovery of the \$50.00 filing fee.

I find that the Landlord is entitled to recover the filing fee from the Tenant and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, therefore the Landlord is hereby ordered to retain \$50.00 from the Tenant's security deposit.

The balance of the Tenants' 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 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