

DECISION

Dispute Codes OPR 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 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 18, 2010, the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were submitted in the Landlord's evidence and the Tenant is deemed to have received the hearing documents on February 23, 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*?

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 October 4, 2009 for a fixed term tenancy that will switch to a month to month tenancy after September 30, 2010, for the monthly rent of \$1,850.00 due on 1st of the month and a deposit of \$925.00 was paid on September 30, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 30, 2010 with an effective vacancy date of February 16, 2010 due to \$1,850.00 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 by registered mail on February 3, 2010. Canada Post receipts were provided in the documentary evidence.

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 8, 2010, five days after it was mailed, and the effective date of the notice is February 18, 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. Therefore I approve the Landlord's request for an Order of Possession.

Filing Fee – The Landlord has been successful with their application and I hereby award recovery of the \$50.00 filing fee. The Landlord may retain \$50.00 from the Tenant's \$925.00 security deposit as recovery of the filing fee.

I hereby order that the Tenant's remaining security deposit of \$875.00 (\$925.00 plus \$0.00 interest less \$50.00 filing fee) currently held in trust by the Landlord, 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: March 04, 2010.

Dispute Resolution Officer