

## **DECISION**

Dispute Codes - OPR, MNR, FF

### Introduction

This matter was conducted 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 a monetary order due to unpaid rent and utilities.

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 tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Act states a document send by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that the tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and utilities; to a monetary order for unpaid rent and utilities; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on October 3, 2009 for a one year fixed term tenancy beginning on October 10, 2009 for the monthly rent of \$900.00 due on the 1<sup>st</sup> of the month and a security deposit of \$450.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 11, 2010 with an effective vacancy date of February 21, 2010 due to \$900.00 unpaid rent and \$334.89 unpaid utilities.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the month of February, 2010 and the utilities due on February 9, 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities when it was served personally to the tenants on February 11, 2010 at 8:00 p.m. The landlord has provided written confirmation that this service was witnessed by a third party.

The Notice states that the tenants had five days to pay the rent and utilities or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to End Tenancy within five days.

### Analysis

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 11, 2010 and the effective date of the notice is February 21, 2010.

I accept the evidence before me that the tenants failed to pay the rent owed in full within the 5 days granted under Section 46 (4) of the *Act*. However, the landlord has failed to submit evidence that the tenants were provided a written demand for the utilities and subsequently given 30 days to pay the utilities, as required by Section 46(6), I therefore dismiss this portion of the landlord's application, with leave to reapply.

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.

### Conclusion

I 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.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and therefore grant a monetary order in the amount of **\$950.00** comprised of \$900.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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.

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Dispute Resolution Officer