

## **DECISION**

### **Dispute Codes - OPR, MNR**

#### **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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 3, 2010 the landlord served two of the tenants with the Notice of Direct Request Proceeding personally and two of the tenants 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 had 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 to a monetary order for unpaid rent, 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 March 16, 2008 for a 1 year fixed term tenancy beginning on April 1, 2008 that converted to month to month tenancy for the monthly rent of \$1,600.00 due on the 1<sup>st</sup> of the month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 19, 2010 with an effective vacancy date of March 1, 2010 due to \$2,070.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months of January 2010 and February, 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served by posting it to the tenants' rental unit on February 2, 2010. 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 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 had 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 22, 2010 and the effective date of the notice is amended to March 4, 2010, pursuant to Section 53 of the *Act*. 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*.

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 tenants 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 **\$2,070.00** rent owed.

This order must be served on the tenants 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 17, 2010.

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Dispute Resolution Officer