

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 March 8, 2010, at 10:00 a.m. 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 March 13, 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 is 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 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 January 23, 2010 for a fixed term tenancy beginning February 1, 2010 and switching over to a month to month tenancy after January 31, 2010, for the monthly rent of \$800.00 due on 1st of the month and a deposit of \$400.00 was paid on January 23, 2010 however the Landlord has advised that a stop payment was put on the security deposit cheque; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 3, 2010 with an effective vacancy date of February 13, 2010 due to \$1,200.00 in unpaid rent and deposit.

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 on the Tenant's door on February 3, 2010 at 9:00 a.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 5, 2010, three days after it was posted to the Tenant's door, and the effective date of the notice is February 15, 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 I approve the Landlord's request for an Order of Possession.

As the Landlord has been successful with their application I hereby award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim as follows:

Unpaid Rent for January 2010	\$800.00
Filing fee	50.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$850.00

As I have ended the tenancy and issued an Order of Possession there is no need to order the Tenant to pay the Landlord a security deposit therefore I dismiss the Landlord's claim of \$400.00 for the security deposit.

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.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$850.00**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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.

Dispute Resolution Officer