

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, 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 for money owed or compensation under the Act.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 15, 2010<sup>9</sup> the landlord served the tenant with the Notice of Direct Request Proceeding in person.

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

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent and late fees from the tenant; and to recover the filing fee from the tenant 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 tenant;

- A copy of a residential tenancy agreement which was signed by the parties on August 21, 2009 for a one year fixed term tenancy beginning March 01, 2009, for the monthly rent of \$1,500.00 due on 1st of the month.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on February 02, 2010 with an effective vacancy date of February 15, 2010 due to \$6,060.00 in unpaid rent and late fees.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed for the months of November and December, 2009 and January and February, 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent and late fees when it was posted on the door of the tenant's rental unit on February 02, 2010 at 9.15 a.m.

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

### Analysis

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 05, 2010, and the effective date of the notice remains the same at February 15, 2010. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the five days granted under section 46 (4) of the *Act*. I also accept that the tenancy agreement states that the landlord will charge late fees of \$15.00 each month rent is late and to that effect the landlord has charged the tenant an additional \$60.00 for the four months' that rent was unpaid.

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.

### 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 section 67 in the amount of **\$6,110.00** comprised of \$6,000.00 rent owed, \$60.00 for late fees and the \$50.00 fee paid by the Landlord for this application. I grant an order for the amount due of **\$6,110.00**. 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 03, 2010.

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Dispute Resolution Officer