

DECISION

Dispute Codes OPR MNR MNSD 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, an Order to retain the security deposit in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 17, 2010 the Landlord served each Tenant with the Notice of Direct Request Proceeding, via registered mail. Canada Post receipts were submitted in the Landlord's evidence and each Tenant is deemed to be served the Notice of Direct Request on March 22, 2010, five days after they were mailed in accordance with section 90 of Act. 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; to a Monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 55 and 72 of the *Residential Tenancy Act* (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 each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on December 28, 2009 for a fixed term tenancy beginning on January 1, 2010 and switching to a month to month tenancy after June 30, 2010 for the monthly rent of \$1,200.00 due prior to the 1st of the month and a deposit of \$600.00 was paid on approximately December 28, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, March 4, 2010 with an effective vacancy date of March 14, 2010 due to \$1,200.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the Tenants' door on March 4, 2010 at 4:30 p.m. in the presence of a witness.

Analysis

Order of Possession – Upon review of the evidence I 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 March 7, 2010, three days after it was posted to the Tenants' door, and the effective date of the notice is March 17, 2010 pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have 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 and I hereby award the Landlord an Order of Possession.

Monetary Order – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Tenants as follows:

Unpaid Rent for March 2010	\$1,200.00
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$1,250.00
LESS the Security Deposit of \$600.00 plus interest from December 29, 2009 to March 25, 2010 of \$0.00	-600.00
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$650.00

Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. 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 **\$650.00**. The order must be served on the respondent Tenants 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 25, 2010.

Dispute Resolution Officer