

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, a Monetary Order for unpaid rent, to keep the security deposit, 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 at 4:30 p.m. the Landlord served each Tenant with the Notice of Direct Request Proceeding by posting them to the Tenants' door.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to section 55 of the *Residential Tenancy Act (Act)*?

Is the Landlord entitled to a Monetary Order for unpaid rent and to keep the security deposit pursuant to sections 55 and 72 of the *Residential Tenancy Act (Act)*?

Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant; and
- A copy of a residential tenancy agreement which was signed by all parties on November 10, 2009 for a fixed term tenancy beginning November 1, 2009 which

is set to expire on April 30, 2010 for the monthly rent of \$1,000.00 due on 31st of the month and a deposit of \$500.00 was paid on November 1, 2009; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, March 3, 2010, with an effective vacancy date of March 14, 2010 due to \$1,000.00 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 to the Tenants' door on March 3, 2010 at 11:50 a.m. in the presence of a witness.

Analysis

Section 89 of the *Residential Tenancy Act* determines the method of service for documents. The Landlord has applied for an order of possession and a monetary Order which requires that the Landlord serve the respondent Tenants with the notice for dispute resolution either in person or by registered mail to an address where the Tenants reside, in accordance with section 89 (1) of the Act.

In this case the Landlord personally served the Tenants by posting the notices of the Direct Request Proceeding to the Tenants' door. Section 89(2)(d) provides that if the notice of direct request application was posted to the Tenants' door then service is met only for the request of an Order of Possession. Therefore, I find that the service requirements for the request for a monetary order have not been met and I hereby dismiss the Landlord's request for a monetary order, with leave to reapply, and the following decision will only consider the Landlord's request for an Order of Possession.

Order of Possession - 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 March 6, 2010 and the effective date of the notice is March 16, 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 approve the Landlord's request for an Order of Possession.

The Landlord has been partially successful with their application therefore I award the Landlord recovery of the \$50.00 filing fee.

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 Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is hereby ordered to retain \$50.00 from the Tenants' security deposit. The remaining balance of the security deposit of \$450.00 (\$500.00 - \$50.00) plus interest is to be administered in accordance with section 38 of the *Residential Tenancy Act*.

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 26, 2010.

Dispute Resolution Officer