

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 Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on March 16, 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 the Tenants are deemed to be served the hearing package on March 21, 2010, five days after they were mailed, in accordance with section 90 of the 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

Is the Landlord 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 evidentiary material submitted into evidence 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 August 29, 2008 for a month to month tenancy effective September 1, 2008, for the monthly rent of \$985.00 due on 1st of the month and a deposit of \$492.50 was paid on September 1, 2008; and

- A notation on the Landlord's application which clarifies that the outstanding rent of \$1,550.00 is comprised of \$650.00 owing for February 2010 and \$900.00 owing for March 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, March 5, 2010 with an effective vacancy date listed of March 5, 2010 due to \$1,550.00 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 via registered mail on March 5, 2010. Canada Post receipts were submitted in the Landlord's evidence and the Tenants are deemed to have received the 10 Day Notice on March 10, 2010, five days after it was mailed in accordance with section 90 of the Act.

Analysis

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 10, 2010, five days after it was mailed, and the effective date of the notice is March 20, 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 approve the Landlord's request for an Order of Possession.

Monetary Claim – I find that the Tenants have failed to comply with section 26 of the Act which provides that a tenant must pay rent when it is due under the tenancy agreement. Therefore I find the Landlord is entitled to a monetary claim for unpaid rent.

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

The Landlord is entitled to a Monetary Order as follows:

Unpaid Rent for February 2010	\$650.00
Unpaid Rent for March 2010	900.00
Filing fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,600.00

I hereby order that the Tenants' security deposit of \$492.50, currently held in trust by the Landlord, to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

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.

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 **\$1,600.00**. 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 26, 2010.

Dispute Resolution Officer