

## 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, to keep the security and or pet deposit, 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 April 7, 2010, at 8:00 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at the rental unit in the presence of three witnesses who signed the proof of service form. 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 to recover the cost of the filing fee, pursuant to sections 38, 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 Tenant and the Landlord on May 8, 2009 for a fixed term tenancy agreement beginning on June 1, 2009 and switching to a month to month tenancy after May 31, 2010, for the monthly rent of \$1,600.00 due on the 1st of the month. A deposit of \$800.00 was paid.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on March 26, 2010, does not list an effective vacancy day, and due to \$9,880.00 in unpaid rent. (Note the original amount of unpaid rent was listed as \$7,750.00 which was crossed out and \$9,880.00 written above it.) and;

- A copy of a hand written tenant ledger which displays days and dollar amounts of rent paid.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when the Landlord served it personally to a person who resides with the Tenant on March 26, 2010 at 4:30 p.m. This alleged occupant signed the proof of service form acknowledging receipt of the Notice and noting that they were a tenant.

### 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 March 26, 2010 and the effective date of the notice is April 5, 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 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.

**Monetary Claim** - The Landlord has filed through the Direct Request Proceeding and is claiming for more than eleven months of unpaid rent for a total of \$9,880.00. I note that there is a document submitted that appears to be a tenant ledger; however it is difficult to substantiate why there are two columns of payments listed and in some cases the same amount and same dates are listed side by side.

I find that the number of months of unpaid rent being claimed by the Landlord to be too excessive to consider in a non-participatory hearing as there is no indication of how the Landlord mitigated their loss. Therefore this application does not fit the criteria of a direct request proceeding. Based on the foregoing, I find that a conference call hearing is required in order to determine the merits of the Landlord's monetary claim.

### 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.

A copy of the Landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

I find that a conference call hearing is required in order to determine the merits of the Landlord's application for a monetary order. Notices of Reconvened Hearing are enclosed with this decision for the Landlord. A copy of the Notice of Reconvened Hearing, this Interim Decision, the Application for Dispute Resolution, and any evidence that will be introduced at the hearing by the Landlord must be served upon Tenant, in accordance with section 88 of the *Act*, within **three (3) days** of receiving this decision.

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: April 13, 2010.

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Dispute Resolution Officer