

DECISION

Dispute Codes - OPR, MNSD

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.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on April 1, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document send by mail is deemed served on the 5th day after it is mailed.

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; for all or part of the security deposit, 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 parties on August 17, 2004 for a month to month tenancy beginning on September 1, 2004 for the monthly rent of \$450.00 a security deposit of \$225.00 was paid; 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 of March 15, 2010 due to \$500.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of March, 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent personally on March 5, 2010. The landlord has provided written confirmation that this service was witnessed by a third party.

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 March 5, 2010 and the effective date of the notice is March 15, 2010. I accept the evidence before me that the tenant 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.

As "security deposit" is defined in the Act, in part, as money paid by a tenant to a landlord to be held as security for any liability or obligation of the tenant respecting the residential property, I find the landlord is entitled to claim the security deposit against rent owed by the tenant.

The landlord did not apply for a monetary order for the total amount owed for overdue rent as such, he is at liberty to file a separate application for any further monies owed for rent over and above the security deposit.

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 to Section 67 in the amount of **\$232.97** comprised of the original security deposit plus interest held, in partial compensation for rent owed to the landlord.

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.

Dispute Resolution Officer