

DECISION

Dispute Codes - OPR, MNR, FF

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 7, 2010 the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent 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 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; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on April 28, 2009 for a month to month tenancy beginning on May 1, 2009 for the monthly rent of \$800.00 due on the 1st of the month and a security deposit of \$800.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 7, 2010 with an effective vacancy date of April 11, 2010 due to \$1,640.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the months March and April 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent personally on April 8, 2010 at 4:30 p.m. The landlord has provided written confirmation that this service was witnessed by a third party.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not apply to dispute the Notice to

End Tenancy within five days. The landlord noted on his application that the tenants did pay \$800.00 on April 11, 2010.

Analysis

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 April 8, 2010 and the effective date of the notice is amended to April 18, 2010, pursuant to Section 53 of the *Act*. I accept the evidence before me that the tenants 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.

However, in the tenancy agreement it is noted that the landlord received a security deposit at the start of the tenancy in the amount of \$800.00, equal to the amount of the monthly rent. Section 19 (1) of the *Act* states a landlord must not require or accept a security deposit that is greater than ½ month's rent payable under the tenancy agreement.

Section 19 (2) states that if the landlord does accept a security deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent; as such I find the outstanding amount of rent owed to the landlord less late fees is \$400.00.

Section 55 (4) of the *Act* authorizes me to grant an order of possession and an order requiring the payment of rent through the Direct Request Proceeding if the application is in relation to non-payment of rent only. I am not authorized to require the payment of late fees through this process. I dismiss this portion of the landlord's application.

Conclusion

I 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 tenants 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 and therefore grant a monetary order in the amount of **\$450.00** comprised of \$400.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced 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: April 22, 2010.

Dispute Resolution Officer