

## **DECISION**

Dispute Codes - OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent.

The hearing was conducted via teleconference and was attended by the landlord's agent. The tenant did not attend.

The landlord testified that the Notice of Hearing documents were served to the tenant on March 26, 2010 via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the testimony of the landlord, I find that the tenant has been served with the Notice of Hearing 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 tenants 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 a residential tenancy agreement which was signed by the parties on November 17, 2003 for a month to month tenancy beginning on December 1, 2003 for the current monthly rent of \$308.00 due on the 1<sup>st</sup> of the month and a security deposit of \$300.00 was paid on November 8, 2003; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on March 4, 2010 with an effective vacancy date of March 15, 2010 due to \$308.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month March 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by posting the Notice to the door of her rental unit on March 4, 2010.

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.

The landlord testified the tenant paid the rent for March 2010 on March 30, 2010. The landlord also testified the tenant had not paid April 2010 rent until April 7, 2010 and that as of today has not yet paid rent for May 2010.

### 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 7, 2010 and the effective date of the notice is amended to March 17, 2010, pursuant to Section 53 of the *Act*. 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.

### 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.

As the landlord testified the tenant has paid rent for both March and April 2010, I dismiss the landlord's application for a monetary order for unpaid rent, however

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$50.00** comprised of the 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: May 04, 2010.

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Dispute Resolution Officer