## DECISION

<u>Dispute Codes</u>      OPR, MNR, MNSD, FF

<u>Introduction</u>

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, to keep the tenants security deposit and recover the filing fee.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 14, 2010 the landlords served the tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlords, I find that the tenants have been served with the Dispute Resolution Direct Request Proceeding documents.

<u>Issue(s) to be Decided</u>

The issues to be decided are whether the landlords are entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

<u>Background and Evidence</u>

The landlords 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 November 01, 2009, for a fixed term tenancy beginning on November 01, 2009 which reverted to a month to month tenancy at the end of the fixed term, for the monthly rent of $1,800.00 due on the 1st of the month and a security deposit of $850.00 was paid on November 01, 2009.

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on May 02, 2010 with an effective vacancy date of May 10, 2010 due to $$1,800.00 in unpaid rent.

Documentary evidence filed by the landlords indicates that the tenants have failed to pay the rent owed for the month of May, 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was sent to the tenants by registered mail on May 03, 2010.

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.

Analysis

I have reviewed all documentary evidence and accept that the tenants have been served with notice to end tenancy as declared by the  landlords. The notice is deemed to have been received by the tenants on May 08 2010, and the effective date of the notice is amended to May 18, 2010 pursuant to section 53 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.

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 section 67 in the amount of **$1,850.00** comprised of $1,800.00 rent owed and the $50.00 fee paid by the landlords for this application. I order that the landlords may retain the deposit held of $850.00 in partial satisfaction of the claim and grant an order for the balance due of **$1,000.00**. 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 19, 2010.

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Dispute Resolution Officer