

DECISION

Dispute Codes - OPR, MNR, MNSD, 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 May 17, 2010 the landlord served both tenants with the Notice of Direct Request Proceeding personally.

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; for 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)*.

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 February 1, 2010 for a 6 month fixed term tenancy beginning on February 1, 2010 for the monthly rent of \$825.00 due on the 1st of the month and a security deposit of \$412.50 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on May 2, 2010 with an effective vacancy date of May 13, 2010 due to \$825.00 unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the month of May 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent by posting it on the rental unit door on May 2, 2010 at 1:40 p.m. The landlord has provided written confirmation that this service was witnessed by a third party. The landlord provided a copy the tenant's account ledger showing that a late fee was added and that on May 5, 2010 the tenants paid \$412.50 leaving a balance of rent owed in the amount of \$412.50 for May 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 landlord. The notice is deemed to have been received by the tenants on May 5, 2010 and the effective date of the notice is amended to May 15, 2010, pursuant to Section 53 of the *Act*.

I accept the evidence before me that the tenants failed to pay the full rent owed in full with in the 5 days granted under section 46 (4) of the *Act*. Despite the landlord's application for \$460.00 I find this sum includes monies owed that were not included on the 10 Day Notice and late fees, neither of which can be considered through the Direct Request process.

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 to Section 67 in the amount of **\$462.50** comprised of \$412.50 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$4125.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$50.00**. 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 25, 2010.

Dispute Resolution Officer