

## **DECISION**

### **Dispute Codes**

OPR, MNR, FF

### **Introduction**

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession and a monetary order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 7, 2010, the landlord served each tenant with the Notice of Direct Request Proceeding via registered mail to the service address indicated on the Application. The landlord provided a Canada Post receipt and tracking number as evidence of service for each tenant. Section 90 of the Act determines that a document is deemed to have been served on the 5<sup>th</sup> day after mailing.

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

### **Issue(s) to be Decided**

Is the landlord entitled to an Order of possession?

Is the landlord entitled to monetary compensation for unpaid rent?

Is the landlord entitled to filing fee costs?

### **Background and Evidence**

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each tenant;
- A copy of a residential tenancy agreement which was signed by the parties on July 1, 2007, indicating a monthly rent of \$860.00 due on the first day of the month and that a deposit of \$415.00 was paid on July 1, 2007;
- A copy of a tenant ledger, an April 26, 2010 letter to the tenants demanding arrears payment be made by April 30, 2010 and a “promissory note” dated May 23, 2009 in relation to rent arrears payments to be made; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 26, 2010 with a stated effective vacancy date of May 9, 2010, for \$4,560.00 in unpaid rent due April 1, 2010.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on April 26, 2010, at 11 a.m. with both landlords present. The landlord submitted a copy of a photograph showing the Notice on the door; however this copy was not discernable. The Act deems the tenants were served on April 29, 2010. The Application details indicate that on April 28, 2010, the tenant telephoned the landlord and confirmed receipt of the Notice.

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 from the date of service.

The ledger submitted by the landlord indicates that on September 24, 2008 the tenants had a \$30.00 credit. Since that time the tenants have made payments resulting in arrears in the sum of \$4,560.00. The landlord's Application indicates that some time in 2008 the rent was increased from \$860.00 to \$890.00; the ledger provides payment history from July 1, 2008, which commences with arrears in the sum of \$890.00. owed on July 1, 2008.

The ledger indicates that on March 3, 2010, the landlord provided the tenants with a credit toward rent in the sum of \$1,335.00 for a repair made to the roof.

The tenancy agreement indicates that the landlord will not pay interest on the deposit held in trust.

### 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 29, 2010.

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; May 9, 2010.

I am unable to determine what month in 2008 the rent was increased or if that increase was made as required by the Act. Therefore, I have calculated the rent owed based upon the original amount indicated on the tenancy agreement; \$860.00.

I am able to determine that since July 2008, inclusive the tenants have paid \$15,020.00 of rent owed in the sum of \$18,060.00; based upon monthly rent in the sum of \$860.00. Therefore, I find that the tenants have rent arrears in the sum of \$3,040.00 from July 2008 to April 2010, inclusive and that the landlord is entitled to compensation in that amount.

The landlord is at liberty to submit an Application claiming the balance of any unpaid rent, based upon evidence of a Notice of Rent Increase issued as provided by the Act.

The landlord is holding a deposit plus interest in the sum of \$424.42. The tenancy agreement term which indicates that the landlord will not pay interest on the deposit is unenforceable as it breaches Residential Tenancy Regulation 4. I find, pursuant to section 38(1)(d) of the Act, that the landlord may retain the deposit plus interest in partial satisfaction of the claim for compensation.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent from July 2008 to April, 2010 inclusive, and the application fee cost.

### Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants and the Order 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 **\$3,090.00** comprised of \$3,040.00 rent owed from July 2008 to April, 2010 inclusive, and the \$50.00 fee paid for this application.

I order that the landlord may retain the deposit and interest held of \$424.42 in partial satisfaction of the claim and grant an Order for the balance due of **\$2,665.58**. 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.

The landlord is at liberty to submit an Application claiming unpaid rent in excess of \$860.00 per month.

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 12, 2010.

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Dispute Resolution Officer