

## **DECISION**

### **Dispute Codes** – OPR, MNR, MND, 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 landlord submitted written documentation which declares that on April 27, 2010 the landlord served the tenant with the Notice of Hearing documents 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.

The landlord also submitted written documentation which declares that on May 7, 2010 the landlord served the tenant with his amended application via registered mail.

Based on the written submissions of the landlord, I find that the tenant has been served with the Notice of Hearing documents and amended application.

This matter was originally adjudicated through the Direct Request process but was set over to a participatory hearing to deal with matters of the service of the notice to a person who was not the tenant.

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

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and utilities; to a monetary order for unpaid rent; to compensation for damage to the rental unit; 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 a residential tenancy agreement which was signed by the parties on June 12, 2009 for a 1 year fixed term tenancy beginning on July 1, 2009 for the current monthly rent of \$1,100.00 due on the 1<sup>st</sup> of the month and a security deposit of \$600.00 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on April 6, 2010 with an effective vacancy date of April 16 due to \$1,100.00 in unpaid rent.

Documentary and testimonial evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of April, May and June 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served

to an adult woman on April 6, 2010 at 8:30 a.m. The landlord has provided written confirmation that this service was witnessed by a third party.

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 that once he served the notice to the person in the rental unit he received a call from the tenant who was very upset about receiving the notice to end tenancy.

The landlord also claimed for damages to the rental unit floor and for hydro bills that he had not yet demanded payment for of the tenant.

### 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. In the absence of the tenant at this hearing I accept that the tenant received the Notice to End Tenancy on April 6, 2010 and the effective date of the notice is April 16, 2010. 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.

As to the landlord's claim for damages to the rental unit floor, as the tenant still resides in the rental unit the tenant still has an opportunity to repair any damage prior to the end of the tenancy, I therefore dismiss this portion of the landlord's application with leave to reapply.

As the landlord has not yet demanded payment from the tenant for hydro bills, I dismiss this portion of the landlord's application with leave to reapply.

### 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.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and issue a monetary order in the amount of **\$1,700.00** comprised of \$1,650.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant 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: June 07, 2010.

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Dispute Resolution Officer