

## **DECISION**

Dispute Codes      OPR MNR

### Introduction

This hearing proceeded 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 for unpaid rent and a Monetary Order for unpaid rent.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 8, 2010, the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipt numbers were provided in the Landlord's documentary evidence. The Tenant is deemed to have been served the Direct Request Proceeding documents on June 13, 2010, the fifth day after they were mailed pursuant section 90 of the *Residential Tenancy Act*. Based on the written submissions of the Landlord, I find that the Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order under section 55 of the *Residential Tenancy Act*?

### Background and Evidence

I have carefully reviewed the following evidentiary material submitted by the Landlord:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the Tenant;
- A copy of a residential tenancy agreement which was signed by the Tenant and the Landlord on October 28, 1996 for a one year fixed term switching to a month to month tenancy beginning November 1, 1997 for the monthly rent of \$540.00

due on 1st of the month and the tenant paid a security deposit of \$270.00 on October 28, 1996; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, June 2, 2010, with an effective vacancy date of June 12, 2010 due to \$709.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the Tenant on June 2, 2010 at 7:00 p.m. The Tenant signed the proof of service form acknowledging receipt of the Notice.

### Analysis

**Order of Possession** - 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 June 2, 2010, and the effective date of the notice is June 12, 2010, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenant has 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; therefore I approve the Landlord's request for an Order of Possession.

**Monetary Claim** –The Landlord has listed \$709.00 for unpaid rent on their application for dispute resolution and on the 10 Day Notice to End Tenancy however the monthly rent payable as per the tenancy agreement is \$540.00. The Landlord did not provide evidence to substantiate the amount the Landlord is claiming as outstanding rent for June 2010 or how they arrived at the total of \$709.00 claimed. Based on the aforementioned contradictory information, I find that the Landlord's monetary claim does not meet the criteria to be reviewed through a direct request process and I hereby dismiss the Landlord's monetary claim with leave to reapply.

Any deposit(s) currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

I HEREBY 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 HEREBY DISMISS the Landlord's monetary claim, with leave to reapply.

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 15, 2010.

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Dispute Resolution Officer