

## **DECISION**

Dispute Codes – OPR, MNR,

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act (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. There was no participatory hearing.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 19, 2010 at 12:19 p.m. the landlord served the tenant with the Notice of Direct Request Proceeding personally.

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

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent, pursuant to Sections 46, 55, and 67 of the *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 tenant;
- A copy of a residential tenancy agreement which was signed by the parties on March 10, 2008 for a month to month tenancy beginning on April 1, 2009 for the monthly rent of \$690.00 due on the 1<sup>st</sup> of the month and a security deposit of \$350.00 was paid and a pet deposit of one month's rent; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 4, 2010 with an effective vacancy date of June 14, 2010 due to \$690.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the month of June 2010 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent personally on June 4, 2010 at 6:30 p.m. The landlord has provided written confirmation 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.

### 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. The notice is deemed to have been received by the tenant on June 4, 2010 and the effective date of the notice is June 14, 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.

I note the tenancy agreement states the security deposit "will not be returned if the Tenant fails to fulfill any of the Tenant's covenants, otherwise the security deposit will be returned 15 days after termination of the tenancy agreement". Section 20 of the *Act* prohibits a landlord from including a term in a tenancy agreement that the landlord automatically keeps all or part of the security deposit or pet damage deposit.

I caution the landlord that the tenant must agree in writing to any amounts that are withheld from the security deposit *at the end of the tenancy*. If the tenant does not agree in writing, the landlord must either, in accordance with Section 38 of the *Act*, return the security deposit and pet damage deposit within 15 days of the end of the tenancy and receipt of the tenant's forwarding address or file an Application for Dispute Resolution for any claims against the security deposit.

### 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 I grant a monetary order in the amount of **\$690.00** comprised of rent owed.

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: July 02, 2010.

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Dispute Resolution Officer