

## **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 for this matter.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 22, 2010 at 8:40 a.m. and 11:55 a.m. the landlord served each of the tenants, respectively, 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 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 tenants;
- A copy of a residential tenancy agreement which was signed by the parties on April 28, 2010 for a 3 month fixed term tenancy beginning on May 1, 2010 for the monthly rent of \$1075.00 due on the 1<sup>st</sup> of the month and a security deposit of \$538.00 was paid;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on June 2, 2010 with an effective vacancy date of June 12, 2010 due to \$1075.00 in unpaid rent and \$25.00 for late fees;
- Copies of receipts dated June 4, 2010 and June 7, 2010 for rent and late fees; and
- A copy of a notification from the landlord's bank that the cheque issued on June 7, 2010 had insufficient funds in the tenant's account to cover the cheque.

Documentary evidence filed by the landlord indicates that the tenants 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 2, 2010 at 8:35 p.m. The landlord has submitted written confirmation that the tenant acknowledged 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 landlord submitted that the tenants paid the rent after receiving the notice by two separate cheques. The first cheque was provided to the landlord on June 4, 2010 in the amount of \$400.00. The second cheque was provided to the landlord on June 7, 2010 in the amount of \$700.00. The cheque dated June 7, 2010 was returned as insufficient funds.

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 June 2, 2010 and the effective date of the notice is June 12, 2010.

Despite the tenant's attempt to pay rent in full by cheque on June 7, 2010, I find that since there were not sufficient funds in the tenant's account 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 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 and grant a monetary order in the amount of **\$675.00** comprised of rent owed.

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: July 02, 2010.

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Dispute Resolution Officer