

## **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* (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 June 23, 2010 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail sent to the rental unit address. The landlord provided a Canada Post receipt and tracking number as evidence of service. Section 90 of the Act determines that a document is deemed to have been served on the fifth day after mailing.

Based on the written submissions of the landlord, I find that the tenant has 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?

### **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 October 30, 2007, indicating a monthly rent of \$880.00 due by the first day of the month;
- A copy of a tenant ledger inquiry; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on June 14, 2010, with a stated effective vacancy date of June 24, 2010, for \$1,480.00 in unpaid rent due on June 8, 2010.

Documentary evidence filed by the landlord indicates that the tenant has failed to pay rent owed and was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting to the door of the rental unit on June 14, 2010, at 4 p.m. with a witness present. The Act deems the tenant was served on June 17, 2010.

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 from the date of service.

The Application indicates "previous unrecov. \$540.00 + June arrears \$50.00 + June NSF \$890.00 = total amt owing 1,480.00." The tenant inquiry document submitted as evidence appears to show a zero balance owed effective June 3, 2010 and a reversal in relation to a stop payment on June 10, 2010. The landlord has included NSF fees which do not appear in the tenancy agreement as a term.

### 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 17, 2010.

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.

Section 53 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the Notice effective date is changed to June 27, 2010.

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; June 27, 2010.

Therefore, I find that the landlord is entitled to an Order of possession.

I am unable to discern what amount is owed by the tenant in unpaid rent, as the tenant inquiry document submitted as evidence does not appear to match the details contained in the Application. Therefore, I find that the portion of the Application requesting a monetary claim is dismissed with leave to reapply.

### Conclusion

I find, pursuant to section 55 of the Act, that the landlord is entitled to an Order of Possession effective **two days after service** on the tenant and the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The portion of the Application requesting a monetary order is dismissed 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: July 06, 2010.

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Dispute Resolution Officer