

## **DECISION**

Dispute Codes      OPR, & MNR

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to section 55(4) of the Act, and dealt with an Application for Dispute Resolution by the landlords for an Order of Possession and a monetary order due to unpaid rent.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 28, 2010 the landlords served the tenants with the Notice of Direct Request Proceeding by registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

Based on the written submissions of the landlords, 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 landlords are entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent, pursuant to sections 46, 55, & 67 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding for the tenants;

- A copy of a residential tenancy agreement which was signed by the parties on September 07, 2005 for a tenancy beginning October 01, 2005 for the monthly rent of \$870 due on the 1st of the month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, June 17, 2010 with an effective vacancy date of June 30, 2010 due to \$950.00 in unpaid rent; and
- Two Copies of rent increase forms showing the rent increases of \$30.00 for 2008 and \$50.00 for 2009.

Documentary evidence filed by the landlords indicates that the tenants have failed to pay the full rent owed for the month of June and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent which was posted on the door of the tenant's rental unit on June 17, 2010 and therefore is deemed served three days later.

The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. 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 landlords. The notice is deemed to have been received by the tenants on June 20, 2010 and the effective date of the notice remains unchanged. The tenancy agreement indicates rent is \$870.00 per month whereas the landlord's application indicates rent payable at \$950.00 for June. Where rent has been legally increased since the tenancy commenced it is necessary for the landlord to provide evidence of such rent increases to substantiate rent owing is greater than that indicated in the tenancy agreement. In this instance the landlord has provided two rent increase forms. The first form shows a legal rent increase for 2008 of \$30.00 taking the rent to \$900.00 per month. The second form shows an illegal rent increase of \$50.00 which is above the amount allowed under the *Act* for 2009. The landlord has not provided evidence of an agreement with the tenants to pay this rent increase.

Therefore, I find this increase is not legitimate under the *Act*. I have dismissed this portion of the landlord's application for the additional rent increase of \$50.00 for 2009 with leave to reapply.

I accept the evidence before me that the tenants have failed to pay the rent owed of \$900.00 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 landlords are entitled to an Order of Possession effective **two days after service on the tenant(s)**. This order must be served on the tenant(s) and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlords are entitled to monetary compensation pursuant to section 67 in the amount of **\$900.00** comprised for rent owed. This order must be served on the tenant(s) 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 07, 2010.

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Dispute Resolution Officer