

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 September 2, 2010 at 2:48 p.m. the Landlord served the Tenant in person in the lobby at the rental unit. Based on the written submissions of Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and a Monetary Order pursuant to 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 all parties on July 6, 2010, for a fixed term tenancy beginning July 1, 2010 and switches to a month to month tenancy after December 31, 2010, for the monthly rent of \$825.00 due on 1st of the month and a deposit of \$412.50 was paid on July 4, 2010; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, August 2, 2010 with an effective vacancy date of August 12, 2010 due to \$1745.00 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 on August 2, 2010 at 10:00 a.m. when it was served to the adult female who resides at the rental unit with the Tenant, in the presence of a witness.

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 August 2, 2010, and the effective date of the notice is August 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 and I hereby grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that the Tenant failed to pay the July 1st and August 1, 2010 rent, in violation of section 26 of the *Act* which provides that a tenant must pay rent when it is due under the tenancy agreement. As per the aforementioned I approve the Landlord's request for a Monetary Order as follows:

Unpaid Rent which was due July 1, 2010 and August 1, 2010 (2 x \$825.00)	\$1,650.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$1,650.00

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

The Landlord requested to be reimbursed the filing fee for this application. Filing fees do not meet the requirements to be considered in the Direct Request process.

Therefore I decline to award recovery of the filing fees.

The Landlord had included NSF fees and late payment fees in the amount listed on the 10 DAY Notice for Unpaid Rent. These amounts do not meet the definition of unpaid rent and therefore should not be included in the amount listed on the Notice. The Landlord is at liberty to make application for a participatory hearing if he wishes to pursue a monetary claim for the non refundable fees.

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 Respondent Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,650.00**. The order must be served on the respondent Tenant and is enforceable through the Provincial Court 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: September 10, 2010.

Dispute Resolution Officer