

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 29, 2010 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post receipts were submitted in the Landlord's evidence. The Tenant is deemed to have received the hearing package on October 4, 2010, five days after it was mailed, in accordance with section 90 of the Act. Based on the written submissions of the Landlord, I find that the Tenant was served with the Dispute Resolution Direct 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 August 13, 2010 for a fixed term tenancy beginning September 1, 2010 and switches to a month to month tenancy after September 1, 2011, for the monthly rent of \$1,950.00 due on 1st of the month and a deposit of \$975.00 was to be paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 21, 2010 with an effective vacancy date of October 1, 2010 due to \$2,925.00 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 by leaving it personally with the Tenant in the presence of a witness on September 21, 2010, at 10:05 p.m.

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 September 21, 2010, and the effective date of the notice is October 1, 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 tenancy was effective September 1, 2010 however the Landlord has claimed one half of a month's rent for August 2010. There is insufficient evidence to support the Tenant took occupancy in August and is required to pay the half month's rent. Therefore, based on the evidence I find the Tenant failed to pay the September 1, 2010 rent in full, 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 September 1, 2010 | \$1,950.00 |
| TOTAL AMOUNT DUE TO THE LANDLORD | \$1,950.00 |

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

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 **\$1,950.00**. 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: October 13, 2010.

Dispute Resolution Officer