

## **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. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 2, 2010 the landlord served one of the tenants with the Notice of Direct Request Proceeding personally. Based on the written submissions of the landlord, I find that one of the tenants has been served with the Dispute Resolution Direct Request Proceeding documents.

As the landlord provided no evidence that the other named tenant was served with the Notice of Direct Request Proceeding, I have amended the landlord's application to exclude the second named tenant.

#### 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, 67, and 72 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 tenant;
- A copy of a residential tenancy agreement which was signed by the parties on May 25, 2010 for a month to month tenancy beginning on June 1, 2010 for the monthly rent of \$825.00 due on the 1<sup>st</sup> of the month and a security deposit of \$412.50 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on September 2, 2010 with an effective vacancy date of September 15, 2010 due to \$825.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants failed to pay the full rent owed for the month of September 2010 and that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the rental unit door on September 2, 2010 at 10:00 p.m. and personally to the tenants on September 3, 2010 at 4:00 p.m. The landlord has provided written confirmation that this service was witnessed by a third party.

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 landlord. The notice is deemed to have been received by the tenants on September 3, 2010 and the effective date of the notice is September 15, 2010. I accept the evidence before me that the tenants 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 **\$825.00** comprised of rent owed. This order must be served on the tenant 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: October 19, 2010.

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Dispute Resolution Officer