



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

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 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 November 9, 2010 at 12:41p.m. the Landlord served each Tenant with the Notice of Direct Request Proceeding via registered mail. Canada post receipts were submitted in the Landlord's evidence. Based on the written submissions of the Landlord, I find each Tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Residential Tenancy Act*?

Is the Landlord entitled to 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 Landlords:

- A copy of the Proof of Service of the Notice of Direct Proceeding for each Tenant;
- A copy of a residential tenancy agreement which was signed by the Landlord and the female Tenant and another tenant who is not named in this proceeding on April 20, 2010, for a fixed term tenancy effective April 20, 2010 and switches to a

month to month tenancy after May 1, 2011. The monthly rent of \$1475.00 is due on first day of the month and a security deposit of \$737.50 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 21, 2010 with an effective vacancy date of October 31, 2010 due to \$1475.00 in unpaid rent; and
- The Landlord's application filed on November 9, 2010 which includes a notation that the total arrears includes unpaid October 1, 2010 rent and November 1, 2010 rent totaling \$2950.00 (2 x \$1475.00).

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid when it was posted to the Tenant's door on October 21, 2010, at 9:00 p.m. in the presence of a witness.

Analysis

I have reviewed all documentary evidence and note that the tenancy agreement was signed by only one Tenant who is named in this proceeding; therefore I find the Landlord's application through the Direct Request process may only proceed against the one Tenant who signed the tenancy agreement.

As per the aforementioned I find the Landlord's application against the second named Tenant, the male named on the application and who did not sign the tenancy agreement, is dismissed without leave to reapply.

Order of Possession - I have reviewed all documentary evidence and accept that the Tenant who signed the tenancy agreement 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 October 24, 2010, three days after it was posted to the door, and the effective date of the notice is November 3, 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 has failed to pay the October 1, 2010 rent and the November 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 for Oct. and Nov. 2010 (2 x \$1475.00)	\$2950.00
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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 **\$2,950.00**. 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: November 17, 2010.

Dispute Resolution Officer