

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 January 24, 2011 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 90 of the *Act* states a document sent by mail is deemed served on the 5th day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been served with the Dispute Resolution Direct Request Proceeding documents.

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 16, 2010 for a 1 year fixed term tenancy beginning on June 1, 2010 for the monthly rent of \$903.00 due on the 1st of each month and a security deposit of \$437.50 was paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on January 5, 2011 with an effective vacancy date of January 20, 2011 due to \$1,881.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant failed to pay the full rent owed for the months of December 2010 and January 2011 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted to the

rental unit door on January 5, 2011 at 3:34 p.m. and that this service was witnessed by a third party.

The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not apply to dispute the Notice to End Tenancy within five days.

Analysis

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 January 8, 2011 and the effective date of the notice is January 20, 2011. I accept the evidence before me that the tenant 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.

Despite the landlord's claim for a total of \$1,881.00 the Direct Request process can only consider a monetary order specifically for unpaid rent and not additional fees for insufficient funds and late payment of rent, as such I have not considered the landlord's request for \$75.00 in these additional fees as part of this decision. The landlord remains at liberty to file a separate application for those fees.

Conclusion

I 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 tenant 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 I grant a monetary order in the amount of **\$1,806.00** 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: February 01, 2011.

Residential Tenancy Branch