



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

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.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on February 8, 2011, the Landlord served each Tenant with the Notice of Direct Request Proceeding in person at the rental property.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession 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 each Tenant;
- A copy of a residential tenancy agreement which was signed by all parties on June 25, 2010, for a month to month tenancy effective July 1, 2010, for the monthly rent of \$950.00 due on 1st of the month and a deposit of \$475.00 was paid; and

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, February 2, 2011, with an effective vacancy date of February 12, 2011 due to \$1,254.00 in unpaid rent; and
- A notation on the application which states the \$1,254.00 on the Notice is comprised of \$950.00 rent for February 2011 and \$304.00 unpaid from January 2011. A payment was made on February 4, 2011 of \$316.00 leaving a current outstanding balance of \$938.00.

Documentary evidence filed by the Landlord indicates that the Tenants were served the 10 Day Notice to End Tenancy for Unpaid Rent in person to the female Tenant on February 2, 2011, at 9:40 a.m. The Tenant signed the proof of service document acknowledging receipt of the Notice.

Analysis

Order of Possession - 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 February 2, 2011, the day it was served, and the effective date of the notice is February 12, 2011, pursuant to section 90 of the *Act*. I accept the evidence before me that the Tenants have 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 and I hereby grant the Landlord an Order of Possession.

Monetary Order – The evidence supports that the Tenants have a balance due of \$938.00 for unpaid rent up to February 1, 2011, 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 of **\$938.00.**

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 **\$938.00**. The order must be served on the respondent Tenants 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: February 11, 2011.

Residential Tenancy Branch