



Dispute Resolution Services

Page: 1

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 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 February 3, 2011, at 6:20 p.m. the Landlord served the Tenant with the Notice of Direct Request Proceeding in person at the rental unit.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain an Order of Possession and a Monetary Order as a result of that breach?

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 September 23, 2010, for a fixed term tenancy agreement effective October 1, 2010 and set to switch to a month to month tenancy after March 30, 2011. The monthly rent of \$925.00 is due on first day of the month and a deposit of \$462.50 was paid on September 23, 2010; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, January 19, 2011, with an effective vacancy date of January 29, 2011 due to \$970.00 in unpaid rent; and

- A notation on the application that indicates the amount listed on the 10 Day Notice includes \$20.00 parking fee and \$25.00 penalty late fee and the Tenant made a payment of \$100.00 on January 24, 2011 leaving an outstanding balance of rent as \$825.00. (\$970.00 – 20.00 – 25.00 – 100.00)

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid when it was posted to the Tenant's door on January 19, 2011 at 5:15 p.m. in the presence of a witness.

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 January 22, 2011, three days after it was posted to the door, and the effective date of the notice is February 1, 2011, 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 not paid his January 2011 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 for the amount of outstanding rent of **\$825.00** (\$970.00 – 20.00 – 25.00 – 100.00). The amount of the monetary order was reduced by the parking fee, and the late fee as the Direct Request Process is convened under section 55(4) of the Act which provides for orders relating to non-payment of rent. Late payment fees and parking are not considered rent under the Act therefore the application for these amounts is dismissed with leave to reapply.

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 **\$825.00**. 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: February 11, 2011.

Residential Tenancy Branch