

DECISION

Dispute Codes: OPR and MNR

Introduction

This hearing was conducted as a Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the “Act”), and dealt with an Application for Dispute Resolution by the landlords for an Order of Possession and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that, the landlord served the tenants with the Notice of Direct Request Proceeding in person on July 26, 2011.

Based on the written submission of the landlord, I find that the tenants have been served with the 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 a Monetary Order for the unpaid rent.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notices of Direct Proceeding for the tenants;
- A copy of a residential tenancy agreement which was signed by the parties on March 25, 2011 indicating a monthly rent of \$750.00 due on the first day of the month and that a security deposit of \$375 was paid on March 25, 2011;

- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was served in person on July 18, 2011 and set an end of tenancy date of July 28, 2011.,.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay the rent due on July 1, 2011 in the amount of \$395. However, as the application notes that \$375 was paid on July 1, 2011 and the is \$750, I am amending the monetary claim to \$375. If the extra \$20 is a late fee, such fees cannot be awarded in a Direct Request Proceeding.

The Notice to End Tenancy 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 from the date of service.

The landlord had requested a monetary claim in this application for one half-month rent for July 2011.

Analysis

I have reviewed all documentary evidence and accept that the tenants were served with Notice to End Tenancy as declared by the landlord.

I accept the evidence before me that the tenants failed to pay the rent owed in full within the five 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 which was July 28, 2011.

Therefore, I find that the landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **two days after service** on the tenants. The Order may be filed in the Supreme Court and enforced as an Order of that Court.

I find that the landlord are entitled to a Monetary Order pursuant to section 67 of the *Act* for the unpaid June rent of \$375. This Order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

The landlord remains at liberty to make application for any further losses as may be ascertained at the conclusion of the tenancy and the disposition of the security deposit remains to be dealt with in accordance with section 38 of the *Act*.

August 4, 2011.