

## **DECISION**

Dispute Codes      OPR MNR MNSD FF

### Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 74(2)(b) of the Act, and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 9, 2009 the landlord served the tenant with the Notice of Direct Request Proceeding, served. This service was supported by the documentary evidence supplied by the landlord in the form of Canada Post receipts.

The landlord received the Direct Request Proceeding package on May 8, 2009 and initiated service on May 9, 2009.

Based on the written submissions of the landlord, I find the tenant has been duly served with the Dispute Resolution Direct Request Proceeding documents for the purposes of an application under section 55, for an Order of Possession and section 67 for a Monetary Order.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an Order of Possession for unpaid rent; to a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 55, 67, and 72 of the *Residential Tenancy Act (Act)*. I have reviewed all documentary evidence submitted by the landlord.

## 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 August 1, 2003, indicating \$650.00 per month rent due on the first of the month, a deposit of \$325.00 was paid on August 1, 2003.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on April 8, 2009 with an effective vacancy date of April 23, 2009 for \$1,130.00 in unpaid rent
- Proof of service of the 10 Day Notice to End Tenancy for unpaid rent including a copy of the Canada Post Receipt
- Notice of rent increase effective November 1, 2008

Documentary evidence filed by the landlord indicates that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent by registered mail on April 9, 2009. 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 pay the rent or apply to dispute the Notice to End Tenancy within five days. I accept that the tenant has been served with notice to end tenancy effective on April 24, 2009, 10 days after service was effected on April 14, 2009 (five days after it was mailed pursuant to section 90 of the *Act*).

## Analysis

**Order of Possession** - 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.

**Monetary Order** – I find that the landlord has provided contradictory information in relation to the total amount of arrears. The application for dispute resolution lists an amount owing of \$1,130.00 and that this amount consists of part of February, all of March and all of April Rent. If rent was payable at \$785.00 per month and the tenant

did not pay part of February, all of March and all of April the amount owing would be more than the amount requested by the landlord on their application.

The landlord has an amount outstanding listed as \$2,700.00 as of May 8, 2009 which is more than double the amount requested in the application.

Given the existence of such differing amounts, I hereby dismiss the landlords monetary claim with leave to reapply.

As the landlord is partially successful in their application I hereby grant their request to recover the filing fee for this application.

#### 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 and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY DISMISS the landlord's monetary claim for unpaid rent with leave to reapply.

I HEREBY FIND in favor of the landlord's monetary claim to recover the filing fee from the tenant. A copy of the landlord's decision will be accompanied by a Monetary Order for \$50.00. The order must be served on the respondent and is enforceable through the Provincial Court 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: May 14, 2009.

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Dispute Resolution Officer