

## **DECISION**

Dispute Codes      OPR MNR MNSD FF ET

### 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, a Monetary Order, an Order to retain the security deposit in partial satisfaction of the claim, and to end the tenancy early.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 9, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding in person at the rental unit.

Based on the written submissions of the Landlord, I find that the Tenants have 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; to a Monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the filing fee from the Tenants for the cost of the Application for Dispute Resolution, pursuant to sections 38, 46, 55, 67, and 72 of the *Residential Tenancy Act (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 each Tenant;

- A copy of a residential tenancy agreement which was signed by the Female Tenant and the Landlord for a month to month tenancy beginning March 1, 2009 for the monthly rent of \$1,000.00 due on 1st of the month and a deposit of \$500.00 was paid on or before March 1, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 2, 2009 with an effective vacancy date of July 12, 2009 due to \$835.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the Tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent when it was served personally to the Tenants on July 2, 2009 at 11:30 a.m.

### 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 July 2, 2009, and the effective date of the notice is July 12, 2009 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.

The Landlord's request for an Order to End the Tenancy early has been resolved by the issuance of the Order of Possession.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim, that the monetary claim is to be against the Female Tenant as she is the only one named in the tenancy agreement, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit, and that the Landlord is entitled to recover the filing fee from the Female Tenant as follows:

Unpaid Rent for July 2009	\$835.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$885.00</b>
Less Security Deposit of \$500.00 plus interest of \$0.00	- 500.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$385.00</b>

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenants**. This order must be served on the Respondents 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 \$385.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

Dated: July 22, 2009.

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Dispute Resolution Officer