

DECISION

Dispute Codes OPR MNR MNSD FF

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 and to recover the cost of the filing fee from the Tenants for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on July 20, 2009 the Landlord served each Tenant with the Notice of Direct Request Proceeding in person at the rental unit at 3:00 p.m.

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 cost of the filing fee, 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 one Tenant and the Landlord for a month to month tenancy beginning June 1, 2008 for the monthly rent of \$775.00 due on 1st of the month and a deposit of \$380.00 was paid on June 1, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 10, 2009 with an effective vacancy date of July 20, 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 one of the Tenant's on July 10, 2009 at 9:00 a.m. in the presence of a witness.

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 10, 2009 and the effective date of the notice is July 20, 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.

Monetary Claim – I find that the Landlord has listed \$835.00 for unpaid rent on his application for dispute resolution and the 10 Day Notice to End Tenancy however the tenancy agreement stipulates that rent is payable in the amount of \$775.00. The Landlord did not provide evidence to substantiate the amount the Landlord is claiming for outstanding rent and why it was different than the amount showing on the tenancy agreement as the amount due for rent. Based on the aforementioned contradictory information, I find that the Landlord's monetary claim does not meet the criteria to be

reviewed through a direct request process and hereby dismiss the Landlord's monetary claim with leave to reapply.

Filing fee - \$50.00. I find that the Landlord has succeeded in large and that he should recover the filing fee from the Tenants.

Monetary Order – I find that the Landlord is entitled to recover the filing fee from the Tenants and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest.

Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	\$50.00
Less Security Deposit of \$380.00 plus interest of \$3.33 (June 1, 2008 to July 31, 2009)	- 383.33
Balance of Security Deposit and Interest	\$333.33

The balance of the Tenants' security deposit is 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 Tenants**. This order must be served on the Tenants and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY DISMISS the Landlord's monetary claim, with leave to reapply.

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: July 31, 2009.

Dispute Resolution Officer