

## **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, and 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 July 17, 2009 the Landlord served the Tenant with the Notice of Direct Request Proceeding via registered mail. Canada Post Receipt numbers were submitted in the Landlord's documentary evidence. The Tenant is deemed to be served the hearing documents on July 22, 2009, the fifth day after they were mailed pursuant to section 90 of the *Residential Tenancy Act*. Based on the written submissions of the Landlord, I find that the Tenant has 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 and utilities; 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, 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 the Tenant;

- A copy of a residential tenancy agreement which was signed by all parties for a month to month tenancy beginning May 1, 2009 for the monthly rent of \$550.00 due on 1st of the month and a deposit of \$200.00 was to be paid on or before April 29, 2009; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, July 7, 2009 with an effective vacancy date of July 17, 2009 due to \$205.00 in unpaid rent (\$25.00 owing towards the security deposit, \$50.00 unpaid for May 1, 2009 rent, \$50.00 unpaid for June 1, 2009 rent, and \$80.00 unpaid for July 1, 2009 rent) and \$64.04 in unpaid Utilities.

Documentary evidence filed by the Landlord indicates that the Tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the Tenant's door on July 7, 2009 at 2:20 p.m. The Tenant signed a copy of the 10 Day Notice acknowledging receipt of the notice on July 8, 2009 at 2:20 p.m.

### 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 July 8, 2009 and the effective date of the notice is July 18, 2009 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.

**Unpaid Utilities** - The 10 Day Notice to End Tenancy was issued listing "You have failed to pay utilities in the amount of \$64.04." Section 46 of the *Residential Tenancy Act* states that if utility charges are unpaid more than 30 days **after the tenant is given a written demand for payment of them**, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section by issuing a 10 Day

Notice to End Tenancy. I note that the Landlord did not provide evidence to prove that a written demand was issued to the Tenant for the unpaid utilities and there is no evidence in support of what the utility charges represent. Based on the aforementioned I hereby dismiss the Landlord's claim for unpaid utilities of \$64.04, without leave to reapply.

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

Unpaid Rent for May 2009 \$50.00, June 2009 \$50.00, July 2009 \$80.00	\$180.00
Filing fee	50.00
Sub total (Monetary Order in favor of the landlord)	<b>\$230.00</b>
Less Security Deposit of \$175.00 (\$200.00 – balance owed \$25.00) plus interest of \$0.00	-175.00
<b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>	<b>\$55.00</b>

### 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 \$55.00. 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: August 04, 2009.

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Dispute Resolution Officer