



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This matter was conducted by way of 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 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 August 11, 2009 at 5:00 pm at the rental unit the landlord served each tenant with the Notice of Direct Request Proceeding via personal delivery. Section 90 of the Act determines that a document is deemed to have been served on the day it is personally delivered.

Based on the written submissions 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; 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, 55, 67, and 72 of the 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 renewed residential tenancy agreement which was signed by the parties on an undetermined date, indicating a monthly rent of \$900.00 due on or before the first day of the month and that a deposit of \$450.00 was previously paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on August 5, 2009 with a stated effective vacancy date of August 15, 2009, for \$650.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants have failed to pay rent owed and that the male tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by personal delivery on August 5, 2009 at 2:00 pm with the landlord agent's son present as a witness. The Act deems the tenants were served on the day the notice was personally delivered. The female tenant has been deemed served via an adult who resides at the rental unit.

The Notice 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 application for dispute resolution details includes a request for a \$25.00 late fee; this amount is not included in the amount entered as the monetary Order sought.

Analysis

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 August 5, 2009.

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; August 15, 2009.

Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent, and the application fee cost.

The landlord has not provided the date upon which the tenants started their tenancy and the date the deposit was paid. In the absence of a deposit payment date I am unable to calculate any interest that may have accrued. Therefore, I find that the landlord will continue to retain the deposit which is to be disbursed as required under section 38 of the *Act*.

Conclusion

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

I find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$700.00** comprised of \$650.00 rent owed and the \$50.00 fee paid for this application and I grant an Order in that amount. 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 deposit paid by the tenants will continue to be held in trust by the landlord and must be disbursed as determined by section 38 of the Act.

Dated August 13, 2009.

Dispute Resolution Officer