

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This matter proceeded 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 September 25, 2009, the landlord served each tenant with the Notice of Direct Request Proceeding via personal delivery.

Based on the written submissions of the landlord, I find that the tenants have been duly 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, 46, 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 residential tenancy agreement which was signed by the parties on March 14, 2003, indicating a monthly rent of \$2,600.00 due on the first day of the month and that a deposit of \$1,300.00 was paid on March 12, 2003; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on September 14, 2009, with a stated effective vacancy date of September 24, for \$3,160.50 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenants had failed to pay rent owed and were served the 10 Day Notice to End Tenancy for Unpaid Rent by posting on the door on September 14, 2009. The Act deems the tenants were served on September 17, 2009.

The Notice states that the tenants had five days to pay the rent in full 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, although they did make a partial payment on the outstanding rent due.

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.

I accept the evidence before me that the tenants have failed to pay the rent owed in full with in 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. Therefore, I find that the landlord is entitled to an Order of possession, a monetary Order for unpaid rent, and the application fee cost.

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 **\$1,120.00** comprised of \$1,070.00 rent owed and the \$50.00 fee paid for this application.

I order that the landlord may retain **\$1,120.00** from the deposit and interest held of **\$1,346.02** in satisfaction of the claim and must return to the tenants the balance due of **\$226.02**, pending the outgoing procedures as required under the *Act*.

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: September 30, 2009.

Dispute Resolution Officer