

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 in partial satisfaction of the claim, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 11, 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 September 16, 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; 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 fixed term tenancy beginning October 1, 2008 and scheduled to expire on September 30, 2009 for the monthly rent of \$2,200.00 due on 1st of the month and a deposit of \$1,100.00 was paid on or before October 1, 2008; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, September 2, 2009 with an effective vacancy date of September 15, 2009 due to \$4,400.00 in unpaid rent.

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 September 2, 2009 at 6:00 p.m. in the presence of a witness.

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 September 5, 2009, three days after it was posted to the Tenant's door, and the effective date of the notice is September 15, 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.

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 August 2009 and September 2009 (2 x \$2,200.00) | \$4,400.00 |
| Filing fee | 50.00 |
| Sub total (Monetary Order in favor of the landlord) | \$4,450.00 |
| LESS the Security Deposit of \$1,100.00 plus interest from October 01, 2008 to September 16, 2009, of \$4.15. | -1,104.15 |
| TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD | \$3,345.85 |

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 \$3,345.85. 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: September 16, 2009.

Dispute Resolution Officer