



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, MNSD

Introduction

This matter was conducted 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 and a monetary order due to unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on October 28, 2009 the landlord served the tenants with the Notice of Direct Request Proceeding via registered mail. Section 90 of the Residential Tenancy Act determines that a document is deemed to have been served on the fifth day after it was sent.

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 and to keep all or part of the security deposit, pursuant to sections 38, 46, 55 and 67 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 tenants;



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- A copy of a residential tenancy agreement which was signed by the tenants on February 22, 2006 and by the landlord on February 16, 2006 for a year to year tenancy beginning March 01, 2006 for the monthly rent of \$950.00 due on the 1st of the month and a security deposit of \$300.00 was paid on March 01, 2006.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on October 15, 2009 with an effective vacancy date of October 31, 2009 due to \$3,800.00 in unpaid rent.

Documentary evidence filed by the landlord indicates that the tenant had failed to pay the rent owed for the months of July, August, September and October, 2009 and that the tenant was served a 10 Day Notice to End Tenancy for Unpaid Rent when it was sent to the tenants by registered mail on October 15, 2009.

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.

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 October 20, 2009 Five days after it was mailed. 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*. The landlord has revised the amount owed to \$2819.30 as the tenants last months rent (for October, 2009) was held in trust, with interest added, for the tenants.

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.



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Conclusion

I 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 find that the landlord is entitled to monetary compensation pursuant section 67 in the amount of **\$2819.30** for rent owed. I order that the landlord may retain the deposit and interest held of \$310.37 in partial satisfaction of the claim and grant an order for the balance due of **\$2508.93**. 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.

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: November 06, 2009.

Dispute Resolution Officer