

## **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 November 12, 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 November 17, 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 on September 10, 2009 for a month to month tenancy which began on July 1, 2009 for the monthly rent of \$800.00 due on 1st of the month. I note that while the Landlord has applied to keep the security deposit, the copy of the tenancy agreement provided in evidence does not display a legible amount listed for the amount or date of security deposit paid; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was issued on, October 20, 2009 with an effective vacancy date of November 2, 2009 due to \$800.00 in unpaid rent.

Documentary evidence filed by the Landlord indicates that the Tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent when it was posted on the Tenant's door on October 20, 2009 at 10:30 a.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 October 23, 2009, three days after it was posted to the Tenant's door, and the effective date of the notice is November 2, 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 and I hereby approve the Landlord's request for an Order of Possession.

**Security Deposit** – The tenancy agreement which was submitted into evidence does not clearly display the amount and date the security deposit was paid. Based on the aforementioned I cannot determined how much of the monetary claim can be offset against the security deposit. The Landlord is hereby ordered to administer the security deposit in accordance with section 38 of the Act.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

Unpaid Rent for October 2009	\$800.00
Filing fee	50.00
<b>TOTAL AMOUNT DUE TO THE LANDLORD</b>	<b>\$850.00</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 \$850.00. 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: December 04, 2009.

---

Dispute Resolution Officer